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Contents

Federal Register

Vol. 67, No. 70

Thursday, April 11, 2002

Agency for International Development
PROPOSED RULES
Federal claims collection, 17655–17665
NOTICES
Meetings:
International Food and Agricultural Development Advisory Board, 17671

Agricultural Marketing Service
RULES
Lamb promotion, research and information order, 17847–17864

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Forest Service
See Natural Resources Conservation Service

Air Force Department
RULES
Privacy Act; implementation, 17619–17620

Animal and Plant Health Inspection Service
RULES
Livestock and poultry disease control:
Infectious salmon anemia; indemnification, 17605–17611

Army Department
RULES
Privacy Act; implementation, 17618–17619
NOTICES
Military traffic management:
DOD Personal Property Program, 17679–17680

Centers for Disease Control and Prevention
NOTICES
Meetings:
Radiation and Worker Health Advisory Board, 17694–17695

Centers for Medicare & Medicaid Services
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17695–17696

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Adoption Opportunities Demonstration Projects et al., 17696–17700

Coast Guard
RULES
Regattas and marine parades:
Elizabeth River, Western Branch, Portsmouth, VA; local marine events, 17621–17622
Lawson's Creek Hydroplane Race, 17622–17624
PROPOSED RULES
Ports and waterways safety:
Detroit Captain of Port Zone, Lake St. Clair, Selfridge Air National Guard Base, MI; security zone, 17667–17669
Regattas and marine parades:
Weymouth 4th of July Celebration, 17665–17667
NOTICES
Meetings:
Lower Mississippi River Waterway Safety Advisory Committee, 17754–17755

Commerce Department
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 17674–17675

Defense Department
See Air Force Department
See Army Department
RULES
Privacy Act; implementation
National Reconnaissance Office, 17616–17618
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Proposed collection; comment request, 17675–17679

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Postsecondary education—
Graduate Assistance in Areas of National Need Program, 17681–17682
Language Resource Centers Program, 17680–17681

Employment Standards Administration
See Wage and Hour Division

Energy Department
See Federal Energy Regulatory Commission
See Southeastern Power Administration
NOTICES
Atomic energy agreements; subsequent arrangements, 17682
Meetings:
National Coal Council, 17682–17683
Natural gas exportation and importation:
Burlington Resources Canada Marketing Ltd. et al., 17683

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Petroleum refineries; catalytic cracking units, catalytic reforming units, and sulfur recovery units, 17761–17822
Wet-formed fiberglass mat production, 17823–17845
Air quality implementation plans; approval and promulgation; various States:
Kentucky, 17624–17630
Hazardous waste program authorizations:
Washington, 17636–17643
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Lysophosphatidylethanolamine, 17631–17636

Toxic substances:
Significant new uses—
Benzene, ethenyl-, ar-bromo derivatives, etc., 17643–17649
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Kentucky, 17669
NOTICES
Air programs:
State implementation plans; adequacy status for transportation conformity purposes—
Oregon, 17686–17687
Toxic and hazardous substances control:
New chemicals—
Receipt and status information, 17687–17690

Federal Aviation Administration
NOTICES
Advisory circulars; availability, etc.:
Flight in icing conditions, 17755
Meetings:
Aging Transport Systems Rulemaking Advisory Committee, 17755–17756
Passenger facility charges; applications, etc.:
Yakima Air Terminal-McAllister Field, WA, 17756
Technical standard orders:
Terrain Awareness and Warning System, 17756–17757

Federal Communications Commission
RULES
Radio stations; table of assignments:
Various States, 17654
PROPOSED RULES
Radio stations; table of assignments:
Louisiana, 17670
Washington, 17669–17670
NOTICES
Meetings:
Media Security and Reliability Council, 17690–17691
Network Reliability and Interoperability Council, 17691

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 17691

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
MNS Wind Co. LLC et al., 17683–17685
Virginia Electric & Power Co. et al., 17685–17686

Federal Retirement Thrift Investment Board
RULES
Thrift Savings Plan:
Employee elections to contribute and funds withdrawal methods, 17603–17605

Federal Trade Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17691–17694

Financial Management Service
See Fiscal Service

Fiscal Service
RULES
Financial Management Service:
Automated Clearing House; Federal agency participation, 17895–17904

Fish and Wildlife Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Neotropical Migratory Bird Conservation Act Program, 17711
Privacy Act of 1974:
Systems of records, 17711–17713

Food and Drug Administration
NOTICES
Food additive petitions:
Cyanotech Corp., 17700–17701
Grants and cooperative agreements; availability, etc.:
Food safety research; transmissible spongiform encephalopathies, 17701–17703
Reports and guidance documents; availability, etc.:
Food contact substance notification system, 17703–17704
Hepatitis B; surface antigen assays used to test blood, blood components, and source plasma donations; modified lot-release specification, 17704–17705

Forest Service
NOTICES
Environmental statements; notice of intent:
Colville National Forest, WA, 17671–17672

General Services Administration
RULES
Federal property management:
Promotional benefits, including frequent flyer miles, earned on official travel; property of Government requirement provisions removed, 17649–17650
NOTICES
Environmental statements; availability, etc.:
Chamblee, GA; Centers for Disease Control facility; master plan, 17694
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Proposed collection; comment request, 17675–17679

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
RULES
Fellowships, internships, training:
National Institutes of Health Contraception and Infertility Research Loan Repayment Program, 17650–17654

Housing and Urban Development Department
NOTICES
Organization, functions, and authority delegations:
Chief Financial Officer; order of succession, 17710–17711

Indian Affairs Bureau
NOTICES
Liquor and tobacco sale or distribution ordinance:
Cher-Ae Heights Indian Community of Trinidad Rancheria, CA, 17713–17714

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service

Justice Department
NOTICES
Environmental statements; availability, etc.:
Community Oriented Policing Services Office—Methamphetamine/Drug Hot Spots Program, 17718
Pollution control; consent judgments:
Aliff, William R., representative of Edwin Eugene Aliff Estate, 17719
A-L Processors et al., 17718–17719
Caulk, Daniel E., et al., 17720
Kuroshima Shipping, S.A., et al., 17720
Premcor Refining Group, Inc., 17720–17721
Texaco Exploration & Production Inc., 17721

Labor Department
See Mine Safety and Health Administration
See Occupational Safety and Health Administration
See Wage and Hour Division

Land Management Bureau
RULES
Minerals management:
Alaska; National Petroleum Reserve unitization, 17865–17894

Mine Safety and Health Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17721–17722

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—Proposed collection; comment request, 17675–17679

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
International Truck & Engine Corp., 17757–17758

National Institutes of Health
NOTICES
Meetings:
National Institute of Allergy and Infectious Diseases, 17706–17707
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 17708
National Institute of Environmental Health Sciences, 17709
National Institute of General Medical Sciences, 17705–17706
National Institute of Mental Health, 17706
National Institute of Neurological Disorders and Stroke, 17707–17709
National Institute on Aging, 17706
National Institute on Alcohol Abuse and Alcoholism, 17707
National Institute on Deafness and Other Communication Disorders, 17707–17708
Scientific Review Center, 17709–17710

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
Hawaiian Islands Humpback Whale National Marine Sanctuary, HI; management plan, 17672–17673
Northwestern Hawaiian Islands National Marine Sanctuary, HI; designation, 17673
Permits:
Exempted fishing, 17673–17674

National Park Service
NOTICES
Environmental statements; availability, etc.:
Alcatraz Island, Golden Gate National Recreation Area, CA, 17714–17715
Great Falls Park, VA; entrance station reconstruction, 17715
Organ Pipe Cactus National Monument, AZ; Sonoran pronghorn, 17715–17716
Environmental statements; notice of intent:
Great Smoky Mountains National Park, TN, 17716–17717
Meetings:
Kaloko-Honokohau National Historical Park Advisory Commission, 17717
Manzanar National Historic Site Advisory Commission, 17717–17718

Natural Resources Conservation Service
NOTICES
Field office technical guides; changes:
Maine, 17672

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Exelon Generation Co., LLC, 17725–17728
Reports and guidance documents; availability, etc.:
Personnel dosimetry performance; proficiency testing standard, 17728

Occupational Safety and Health Administration
NOTICES
Nationally recognized testing laboratories, etc.:
MET Laboratories, Inc., 17722–17725

Public Debt Bureau
See Fiscal Service

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Securities and Exchange Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17728–17729
Investment Company Act of 1940:
Shares substitution applications—
Lincoln Benefit Life Co. et al., 17736–17739
Merrill Lynch Life Insurance Co. et al., 17730–17736
Meetings; Sunshine Act, 17739
Applications, hearings, determinations, etc.:
Public utility holding company filings, 17729–17730

Southeastern Power Administration
NOTICES
Power rates:
Jim Woodruff Project, 17686

State Department
RULES
Exchange Visitor Program:
Regulations; revisions, 17611–17616
NOTICES
Grants and cooperative agreements; availability, etc.:
Afghanistan Women's Teacher-Training Project, 17739–17743
Armenia; civic education, pre-service education, and school administrator training; curriculum development projects, 17746–17749
Armenia School Connectivity Program, 17743–17746
Bosnia and Herzegovina Youth Leadership Program, 17749–17751
Burma Refugee Scholarship Program, 17751–17754

Transportation Department
See Coast Guard
See Federal Aviation Administration
See National Highway Traffic Safety Administration

Treasury Department
See Fiscal Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17758

Veterans Affairs Department
NOTICES
Meetings:
Former Prisoners of War Advisory Committee, 17758–17759
Professional Certification and Licensure Advisory Committee, 17759

Wage and Hour Division
PROPOSED RULES
Fair Labor Standards Act:
Domestic service; companionship services exemption; withdrawn
Correction, 17760

Separate Parts In This Issue

Part II
Environmental Protection Agency, 17761–17822

Part III
Environmental Protection Agency, 17823–17845

Part IV
Agriculture Department, Agricultural Marketing Service, 17847–17864

Part V
Interior Department, Land Management Bureau, 17865–17894

Part VI
Treasury Department, Fiscal Service, 17895–17904

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.
To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

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.

5 CFR
1600.....17603
1650.....17603

7 CFR
1280.....17848

9 CFR
53.....17605

22 CFR
62.....17611

Proposed Rules:
213.....17655

29 CFR

Proposed Rules:
552.....17760

31 CFR
210.....17896

32 CFR
326.....17616
505.....17618
806b.....17619

33 CFR
100 (2 documents) 17621, 17622

Proposed Rules:
100.....17665
165.....17667

40 CFR
52.....17624
63 (2 documents) 17762, 17824
180.....17631
271.....17636
721.....17643

Proposed Rules:
52.....17669

41 CFR
101-25.....17649

42 CFR
68c.....17650

43 CFR
3130.....17866
3160.....17866

47 CFR
73.....17654

Proposed Rules:
73 (2 documents) 17669, 17670

Rules and Regulations

Federal Register
Vol. 67, No. 70
Thursday, April 11, 2002

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.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1600 and 1650

Employee Elections To Contribute to the Thrift Savings Plan and Methods of Withdrawing Funds From the Thrift Savings Plan

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is amending the regulations on employee elections to contribute to the Thrift Savings Plan (TSP) to permit participants to transfer into their TSP accounts tax-deferred balances from an expanded group of eligible retirement plans. The Executive Director is also amending the regulations on loans and withdrawals from the TSP to specify that a participant who is seeking an exception to the spousal signature and notification requirements on the ground that the spouse's whereabouts are unknown must demonstrate that he or she made a good faith effort to locate the spouse in the 90 days preceding submission of the request to the TSP.

EFFECTIVE DATE: April 11, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas L. Gray on (202) 942–1662; Merritt Willing on (202) 942–1666; or Patrick J. Forrest on (202) 942–1659. The Board's Fax number is (202) 942–1676.

SUPPLEMENTARY INFORMATION: The Board administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514, which has been codified, as amended, largely at 5 U.S.C. 8351 and 8401–8479. The TSP is a tax-deferred retirement savings plan for Federal employees, which is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code. Sums in a TSP participant's account are held in trust for that participant.

Analysis of the Amendment to Part 1600

The Board's rules concerning the procedures governing employee contributions to the TSP were first published in the **Federal Register** (52 FR 45802) as interim rules on December 2, 1987. The final rule was published in the **Federal Register** (59 FR 55331) on November 4, 1994. On October 27, 2000, Congress passed Public Law 106–361, which amended FERSA to permit the TSP to accept into the Plan any eligible rollover distribution, as that term is defined in section 402(c)(8) of the Internal Revenue Code (I.R.C.), that a qualified trust could accept. 5 U.S.C. 8432(j). Accordingly, on May 2, 2001 (66 FR 22088), the Board amended the final rule to permit participants to transfer into their TSP accounts funds from certain qualified retirement plans and conduit individual retirement accounts (IRAs). On February 27, 2002, the Executive Director published in the **Federal Register** (67 FR 8908) a proposed rule that, in general, expanded the types of plans into and from which an eligible TSP distribution can be made.

The amendment permits the transfer into existing TSP accounts of certain distributions from eligible retirement plans. The rule, consistent with the Internal Revenue Code (I.R.C.) and the changes made by the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) of 2001, defines eligible retirement plans broadly, to include an individual retirement account described at I.R.C. section 408(a); an individual retirement annuity described at I.R.C. section 408(b); a qualified trust; an I.R.C. section 403(a) annuity plan; an I.R.C. section 403(b) tax-sheltered annuity; and an eligible I.R.C. section 457(b) plan maintained by a governmental employer.

In discussing EGTRRA's changes to the Code, the IRS divides these types of plans into ''traditional IRAs'' (i.e., individual retirement accounts described at I.R.C. section 408(a) and individual retirement annuities described at I.R.C. section 408(b)) and ''eligible employer plans'' (i.e., qualified trusts, I.R.C. section 403(a) annuity plans, I.R.C. section 403(b) tax-sheltered annuities, and eligible I.R.C. section 457(b) plans). The Executive Director has revised §§ 1600.1 and 1600.31(a) by redefining eligible retirement plan to take these definitions into account and by including definitions of eligible employer plan and traditional IRA.

In order to be eligible for transfer, distributions from a traditional IRA must meet the requirements for a rollover contribution, set forth at I.R.C. section 408(d)(3) (26 U.S.C. 408(d)(3)). Distributions from an eligible employer plan must meet the requirements for an eligible rollover distribution, set forth at I.R.C. section 402(c)(4) (26 U.S.C. 402(c)(4)). The distinctions between these requirements were not set forth in the proposed regulation. Therefore, in the final rule, the Executive Director has revised § 1600.32(c) to make clear the different requirements that distributions from eligible employer plans and traditional IRAs must meet in order to be accepted by the TSP. Participants will have to certify that their transfers meet these requirements before the funds will be accepted by the TSP.

The Executive Director also revised § 1600.31(b) to clarify that the TSP will not transfer any tax-exempt balances from a uniformed services TSP account into a civilian TSP account. Tax-exempt balances arise from contributions from combat zone pay and are not subject to taxation.

The Board received one comment on the proposed rule. The commenter questioned whether a distribution of the tax-deferred portion of the Voluntary Contributory Program (VCP) available to CSRS employees (5 U.S.C. 8343) can be transferred to the TSP. Contributions to the VCP are made from after-tax money; however, the earnings (interest) on those contributions are tax-deferred until they are paid to the employee. The IRS has stated that that portion of a distribution from the VCP that represents earnings is eligible for transfer and thus, under this final rule, may be transferred to the TSP.

With the changes discussed above, the Executive Director is adopting the proposed rule as final.

Analysis of the Amendment to Part 1650

The Board's rules concerning withdrawals are set forth in 5 CFR part 1650. Those rules require that the spouse of a FERS participant or

uniformed services member consent to an in-service withdrawal and waive his or her entitlement to a joint and survivor annuity in the case of a different post-employment withdrawal election; the spouse of a CSRS participant is entitled to be given notice when the participant applies for a withdrawal. The requirements can be waived by the Executive Director if a participant can establish that the spouse's whereabouts cannot be determined. On February 27, 2002, the Executive Director published in the **Federal Register** (67 FR 8908) a proposed rule that requires a participant's efforts to locate the spouse must have been made within the 90 days preceding submission to the TSP of a request for an exception to the spousal signature or notice requirements.

The Board received no comments on the proposed rule. Accordingly, the Executive Director adopts the provisions of the proposed rule as the final rule.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees of the Federal Government.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, and 1501–1571, the effects of this regulation on State, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by State, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 1532 is not required.

Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 801(a)(1)(A), the Board submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in today's **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 804(2).

List of Subjects

5 CFR Part 1600

Employment benefit plans, Government employees, Pensions, Retirement.

5 CFR Part 1650

Alimony, Claims, Employment benefit plans, Government employees, Pensions, Retirement.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set out in the preamble, title 5, chapter VI, Code of Federal Regulations, is amended as set forth below:

PART 1600—EMPLOYEE ELECTIONS TO CONTRIBUTE TO THE THRIFT SAVINGS PLAN

1. The authority citation for part 1600 is revised to read as follows:

Authority: 5 U.S.C. 8351, 8432(b)(1)(A), 8432(j), 8474(b)(5) and (c)(1).

2. Section 1600.1 is amended by adding in alphabetical order new definitions to read as follows:

§ 1600.1 Definitions.

* * * * *

Eligible employer plan means a qualified trust; an annuity plan described in I.R.C. section 403(a) (26 U.S.C. 403(a)); an annuity contract described in I.R.C. section 403(b) (26 U.S.C. 403(b)); and an eligible deferred compensation plan described in I.R.C. section 457(b) (26 U.S.C. 457(b)) which is maintained by an eligible employer described in I.R.C. section 457(e)(1)(A) (26 U.S.C. 457(e)(1)(A)).

Eligible retirement plan means an eligible employer plan or a traditional IRA.

* * * * *

Traditional IRA means an individual retirement account described in I.R.C. section 408(a) (26 U.S.C. 408(a)) and an individual retirement annuity described in I.R.C. section 408(b) (26 U.S.C. 408(b)) (other than an endowment contract).

* * * * *

3. Section 1600.31 is revised to read as follows:

§ 1600.31 Accounts eligible for transfer.

(a) A participant who is entitled to receive (or receives) an eligible rollover distribution, within the meaning of I.R.C. section 402(c)(4) (26 U.S.C. 402(c)(4)), from an eligible employer plan or a rollover contribution, within the meaning of I.R.C. section 408(d)(3) (26 U.S.C. 408(d)(3)), from a traditional IRA may cause to be transferred (or transfer) that distribution into his or her existing TSP account. This option is not available to participants who have already made a full withdrawal of their TSP account after separation from service or who are receiving monthly payments.

(b) The only balances that the TSP will accept are balances that would otherwise be includible in gross income if the distribution were paid to the participant. The TSP will not accept any balances that have already been subjected to Federal income tax (after-tax monies) or balances from a uniformed services TSP account that will not be subject to Federal income tax (tax-exempt monies).

4. Section 1600.32 is revised to read as follows:

§ 1600.32 Methods for transferring eligible rollover distribution to TSP.

(a) *Trustee-to-trustee transfer.* Participants may request that the administrator or trustee of their eligible retirement plan transfer any or all of their account directly to the TSP by executing and submitting a Form TSP–60 or TSP–U–60, Request for a Transfer Into the TSP, to the administrator or trustee. The administrator or trustee must complete the appropriate section of the form and forward the completed form and the distribution to the TSP record keeper.

(b) *Rollover by participant.* Participants who have already received a distribution from an eligible retirement plan may roll over all or part of the distribution into the TSP in accordance with the following requirements:

(1) The participant must complete Form TSP–60 or TSP–U–60, Request for a Transfer Into the TSP.

(2) The administrator or trustee of the eligible retirement plan must certify on the Form TSP–60 or TSP–U–60 the amount and date of the distribution.

(3) The participant must submit the completed Form TSP–60 or TSP–U–60, together with a certified check, cashier's check, cashier's draft, money order, or treasurer's check from a credit union, made out to the ''Thrift Savings Plan,'' for the entire amount of the rollover. A participant may roll over the full amount of the distribution by making up, from his or her own funds, the amount that was withheld from the distribution for the payment of Federal taxes.

(4) The transaction must be completed within 60 days of the participant's receipt of the distribution from his or her eligible retirement plan. The transaction is not complete until the

TSP record keeper receives the Form TSP–60 or TSP–U–60, executed by both the participant and administrator, trustee, or custodian, together with the guaranteed funds for the amount to be rolled over.

(c) *Participant's certification.* When transferring a distribution to the TSP by either a trustee-to-trustee transfer or a rollover, the participant must certify that the distribution is eligible for transfer into the TSP, as follows:

(1) *Distribution from an eligible employer plan.* The participant must certify that the distribution:

(i) Is not one of a series of substantially equal periodic payments made over the life expectancy of the participant (or the joint lives of the participant and designated beneficiary, if applicable) or for a period of 10 years or more;

(ii) Is not a minimum distribution required by I.R.C. section 401(a)(9) (26 U.S.C. 401(a)(9));

(iii) Is not a hardship distribution;

(iv) Is not a plan loan that is deemed to be a taxable distribution because of default;

(v) Is not a return of excess elective deferrals; and

(vi) If not transferred or rolled over, would be includible in gross income for the tax year in which the distribution is paid.

(2) *Distribution from a traditional IRA.* The participant must certify that the distribution:

(i) Is not a minimum distribution required under I.R.C. section 401(a)(9) (26 U.S.C. 401(a)(9)); and

(ii) If not transferred or rolled over, would be includible in gross income for the tax year in which the distribution is paid.

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THE THRIFT SAVINGS PLAN

5. The authority citation for part 1650 continues to read as follows:

Authority: 5 U.S.C. 8351, 8433, 8434, 8435, 8474(b)(5), and 8474(c)(1).

§§ 1650.60, 1650.61 and 1650.62 [Amended]

6. Sections 1650.60(b), 1650.61(b) and (c)(1)(ii), and 1650.62(b) and (c) are amended by removing the words ''one year'' and adding in their place the words ''90 days'.

7. Section 1650.63(a)(3) and (b) are revised to read as follows:

§ 1650.63 Executive Director's exception to the spousal notification requirement.

(a) * * *

(3) Statements by the participant and two other persons that meet the following requirements:

(i) The participant's statement must give the full name of the spouse, declare the participant's inability to locate the spouse, state the last time the spouse's location was known, explain why the spouse's location is not known currently, and describe the good faith efforts the participant has made to locate the spouse in the 90 days preceding submission to the TSP of the request for an exception. Examples of attempting to locate the spouse include, but are not limited to, checking with relatives and mutual friends or using telephone directories and directory assistance for the city of the spouse's last known address. Negative statements, such as, ''I have not seen nor heard from him'' or, ''I have not had contact with her'', are not sufficient.

(ii) The statements from two other persons must support the participant's statement that the participant has made attempts within the preceding 90 days to locate the spouse and that the participant does not know the spouse's whereabouts.

(iii) All statements must be signed and dated and must include the following certification: ''I understand that a false statement or willful misrepresentation is punishable under Federal law (18 U.S.C. 1001) by a fine or imprisonment or both.''.

(b) A withdrawal election received within 90 days of an approved exception may be processed so long as the spouse named on the form is the spouse for whom the exception has been approved.

§ 1650.64 [Amended]

8. Section 1650.64(c) is amended by removing the words ''one-year period'' and adding in their place the words ''90-day period''.

[FR Doc. 02–8606 Filed 4–10–02; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 53

[Docket No. 01–126–1]

Infectious Salmon Anemia; Payment of Indemnity

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations regarding the control and eradication of certain communicable diseases of livestock or poultry to provide for the payment of indemnity to producers in the State of Maine for fish destroyed due to infectious salmon anemia. Because depopulation is required to control infectious salmon anemia, a successful control program will require indemnification for depopulated fish to gain producer support. This action will, therefore, increase the effectiveness of our efforts to control infectious salmon anemia in Maine and prevent further outbreaks of the disease.

DATES: This interim rule was effective April 5, 2002. We will consider all comments we receive that are postmarked, delivered, or e-mailed by June 10, 2002 .

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–126–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–126–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 01–126–1'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Otis Miller, Jr., National Aquaculture Coordinator, Planning, Certification, and Monitoring, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737–1231; (301) 734–8715.

SUPPLEMENTARY INFORMATION:

Background

The regulations at 9 CFR part 53 (referred to below as the regulations) provide for the control and eradication of diseases including foot-and-mouth disease, rinderpest, contagious pleuropneumonia, exotic Newcastle disease, highly pathogenic avian influenza, or other communicable diseases of livestock or poultry that, in the opinion of the Secretary of Agriculture, constitute an emergency and threaten the livestock or poultry of the United States. The regulations authorize payments for the fair market value of the animals destroyed, as well as payments for their destruction and disposal. The regulations also authorize payments for materials that must be cleaned and disinfected or destroyed because of being contaminated by or exposed to disease.

In a document effective December 13, 2001, and published in the **Federal Register** on December 20, 2001 (66 FR 65679–65680, Docket No. 01–082–1), the Secretary declared an emergency because of infectious salmon anemia (ISA), a foreign animal disease of Atlantic salmon, caused by an orthomyxovirus. The disease affects both wild and farmed Atlantic salmon. The first case of ISA in the United States was confirmed in Maine on February 15, 2001. As of June 25, 2001, ISA has been confirmed in eight sites in Maine.

ISA is the clinical disease resulting from infection with the ISA virus. Signs include hemorrhaging and anemia, which may result in very pale gills. Other external signs may include exophthalmia (bulging eyes), lethargy, and darkening or petechia (pinpoint hemorrhage) on the skin. Internally, kidneys, livers or intestines may show signs of petechia or hemorrhage. Mortality due to ISA varies; cumulative mortality due to the disease varies greatly from a very low percentage (near zero) to more than 50 percent of the fish population. ISA virus does not infect humans or other mammals, since the virus is inactivated at temperatures over 25 °C, far lower than typical mammalian internal temperatures of 37 to 40 °C.

ISA poses a substantial threat to the economic viability and sustainability of salmon aquaculture in the United States and abroad. Salmon production in Maine exceeds 36.2 million pounds annually, with a value of $101 million. Because of outbreaks of ISA in Maine, the State's salmonid industry had already depopulated approximately 900,000 salmon worth nearly $11 million by the time of the Secretary's declaration of emergency. This loss is even greater when capital expenditures such as labor costs and equipment are considered.

Additionally, the existence of ISA in Maine has affected other States due to its ramifications for international trade. For example, when ISA emerged in Maine, Chile and the European Union prohibited the importation of trout and salmon eggs from Washington, Maine, and Idaho. The resulting trade loss is estimated at $2 million for 2001.

On April 24, 2001, the Maine Department of Marine Resources, the Maine Aquaculture Association, and the Maine State Veterinarian requested that the U.S. Department of Agriculture (USDA or the Department) provide the State with assistance in the areas of indemnification, epidemiology, and surveillance for ISA. The Department's Animal and Plant Health Inspection Service (APHIS) has entered into a cooperative ISA control program with the State of Maine to help safeguard the salmon industry from future incursions of this exotic disease and monitor and manage the ISA status of salmonid aquaculture sites in that State.

Because depopulation is required to control ISA, a successful control program will require indemnification for depopulated fish to gain producer support. Therefore, this interim rule amends the regulations in part 53 to provide for the payment of indemnity for fish destroyed because of ISA on or after the December 13, 2001, date of the Secretary's declaration of emergency. The specific amendments are discussed below.

Definitions

We have amended the definition of *disease* in § 53.1 to include ISA among the diseases specifically listed. In addition, we have added a definition of *accredited veterinarian.* This definition, which is the same as the definition used for the term elsewhere in our regulations in title 9, is necessary because, as explained below, the cooperative ISA control program administered by APHIS and the State of Maine requires participants to engage the services of an accredited veterinarian.

We have also provided a definition for *ISA Program Veterinarian.* The ISA Program Veterinarian is the APHIS veterinarian assigned to manage the infectious salmon anemia program for APHIS in the State of Maine and who reports to the Area Veterinarian in Charge. As explained below, participants in the ISA program will be required to submit certain documents to the ISA Program Veterinarian; the ISA Program Veterinarian will also determine the schedule for the periodic on-site disease surveillance, testing, and reporting activities required under the ISA program.

Payment of Indemnity

Section 53.2 of the regulations provides for the Administrator to enter into an agreement with proper State authorities in order to control and eradicate disease. Paragraph (b) of this section provides for the payment of indemnity to cover 50 percent of expenses of purchase, destruction, and disposition of animals and materials required to be destroyed because of being contaminated by or exposed to such disease. In the case of exotic Newcastle disease and highly pathogenic avian influenza, up to 100 percent of these expenses may be covered.

Based on the Secretary's December 13, 2001, declaration of emergency, approximately $8.29 million was transferred from the Commodity Credit Corporation for the Department's ISA control and indemnification efforts for fiscal year 2002. Of this $8.29 million, $7.2 million was estimated to be for indemnification costs. The apportionment for those funds specifies that the Department may pay up to 60 percent of indemnity costs. Therefore, we are adding a provision to § 53.2(b) to provide that, subject to the availability of funding, APHIS may pay up to 60 percent of the expenses of purchase, destruction, and disposition of animals and materials required to be destroyed during fiscal year 2002 because of being contaminated by or exposed to ISA. Section 53.2 contains provisions for the appraisal of animals and materials; reports of the required appraisals will be used in determining the amount of indemnity to be paid in specific cases. The appraisal will consider the number and age of the fish depopulated. The amount of indemnity paid per fish will be the fair market value of the fish, which we will calculate based on industry production costs; as noted previously, APHIS will pay up to 60 percent of the value of the fish destroyed subject to the availability of funding. The Administration is examining how the costs of program activities, including the payment of indemnity, are shared among the Federal government and cooperators such as State and local governments, industry, and producers. Hence, in the future, the indemnity rate provided under this rule may change.

Salvage Value

Paragraph (a) of § 53.4 directs operators to destroy animals affected by or exposed to disease promptly after

appraisal and dispose of them by burial or burning, unless otherwise specifically provided by the Administrator. Because fish infected with or exposed to ISA may retain salvage value if they are sold for processing or rendering, we are adding a provision to this section to allow for those options. Operators who collect salvage value for fish destroyed because of ISA will have that value subtracted from the amount of indemnity they are eligible to receive from APHIS under § 53.2(b).

Program Participation

Section 53.10 of the regulations lists reasons why the Administrator will disallow indemnity claims. We are adding a provision to this section to require that, in order to receive indemnity for fish destroyed because of ISA, claimants must participate fully in the cooperative ISA control program administered by APHIS and the State of Maine.

We are requiring that claimants participate in this program because ongoing surveillance and early detection of disease are essential to effective prevention, management, and control of ISA. Under this program, participants must, at a minimum:

• Establish and maintain a veterinary client-patient relationship with an APHIS accredited veterinarian and inform the ISA Program Veterinarian in writing of the name of their accredited veterinarian at the time the participant enrolls in the ISA program and within 15 days of any change in accredited veterinarians.

The farmed salmon industry uses highly qualified personnel experienced in all aspects of fish culture, husbandry, and health management. While most industry members have established in-house procedures for increased disease surveillance and a working relationship with aquaculture veterinarians and diagnostic laboratories to provide further technical expertise, this requirement will ensure that all participants have ready access to an APHIS accredited veterinarian, who will conduct the surveillance, testing, and reporting activities discussed in the next paragraph and will assist participants in carrying out the other aspects of the program discussed below.

• Cooperate with and assist in periodic on-site disease surveillance, testing, and reporting activities for ISA, which will be conducted by their APHIS accredited veterinarian or a State or Federal official as directed by the ISA Program Veterinarian.

Surveillance ensures that resources and producers' attention will be directed at routine and regularly scheduled inspections and health assessments of fish so that ISA will be quickly diagnosed. Testing with the best and most scientifically sound assays at an approved laboratory will insure prompt and accurate diagnosis. Reporting procedures ensure that once infected or diseased fish are identified control measures and depopulation can proceed rapidly.

• Develop and implement biosecurity protocols for use at all participant-leased finfish sites and participant-operated vessels engaged in aquaculture operations throughout Maine. A copy of these protocols shall be submitted to the ISA Program Veterinarian at the time the participant enrolls in the ISA program and within 15 days of any change in the protocols.

The implementation of effective biosecurity protocols will reduce the risk of the introduction and spread of ISA due to human activities into and between marine sites and cages by movement of farmed fish, equipment, and people.

• Develop, with the involvement of the participant's accredited veterinarian and the fish site health manager, a site-specific ISA action plan for the control and management of ISA. A copy of the action plan shall be submitted to APHIS for review at the time the participant enrolls in the ISA program and within 15 days of any change in the action plan.

The action plan is a document developed for each site that defines the response contingencies for ISA—e.g., activities to be undertaken upon disease detection, notification procedures, etc.—should the disease emerge at the site.

• Participate in the State of Maine's integrated pest management (IPM) program for the control of sea lice on salmonids. A copy of the management plan developed by the participant for the State IPM program shall be submitted to APHIS for review at the time the participant enrolls in the ISA program and within 15 days of any change in the management plan.

Sea lice are copepod arthropods belonging to the genera *Lepeophtheirus* and *Caligus*. Species of both genera infest Atlantic salmon and live in the mucus layer, where they attach and suck blood or cause sores. The larger *Lepeophtheirus* species are generally regarded as capable of transmitting ISA. Sea lice of both genera can cause stress on fish, which adversely affects the immune response. The Maine IPM program for sea lice provides for monitoring, treatment, and management practices designed to minimize the presence of sea lice in pen sites and reduce the need for the use of chemicals and medications. We consider control of sea lice to be a vital component of the ISA control program in Maine; therefore, we will, in cooperation with the State of Maine, review and verify the adequacy of each participant's sea lice management plan.

• Submit to the ISA Program Veterinarian at the time the participant enrolls in the ISA program a complete and current fish inventory information for each participant-leased finfish site with site and cage identifiers. Fish inventory information must include the numbers, age, date of saltwater transfer, vaccination status, and previous therapeutant history for all fish in each participant-leased finfish site.

This information will provide APHIS with the data necessary to establish disease control actions, complete epidemiological assessments, and increase our ability to effectively monitor fish populations.

• Maintain, and make available to the ISA Program Veterinarian upon request, mortality data for each participant-leased finfish site and pen in production.

This can be accomplished utilizing existing industry records systems and log sheets. The mortality data will be used by APHIS in conjunction with the fish inventory information discussed previously to establish disease control actions, complete epidemiological assessments, and increase our ability to effectively monitor fish populations.

• Cooperate with and assist APHIS in the completion of biosecurity audits at all participant-leased finfish sites and participant-operated vessels involved in salmonid aquaculture.

These audits will be performed to assess the efficacy of the biosecurity protocols established by the participants to reduce the risk of the introduction and spread of ISA due to human activities into and between marine sites and cages by movement of farmed fish, equipment, and people.

Miscellaneous Changes

In § 53.2, we have removed two outdated references to the ''Director of Division'' (i.e., the Animal Health Division, a precursor to APHIS' Veterinary Services) and replaced them with references to the Administrator. Also in § 53.2, a reference to the definition of *disease* cited the location of that definition as § 53.1(f). As the definitions in § 53.1 no longer carry paragraph designations, we have removed the reference to paragraph (f).

Emergency Action

This rulemaking is necessary on an emergency basis to ensure that the ISA indemnity program is implemented as soon as possible to prevent the spread of ISA. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We are amending the regulations to provide for the payment of indemnity to producers in the State of Maine for fish destroyed due to ISA. Because depopulation is required to control ISA, a successful control program will require indemnification for depopulated fish to gain producer support. This action will, therefore, increase the effectiveness of our efforts to control ISA in Maine and prevent further outbreaks of the disease.

Below is an economic analysis for the ISA indemnity program described in this document. This economic analysis also provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act.

We do not have enough data for a comprehensive analysis of the economic effects of this interim rule on small entities. Therefore, in accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis for this interim rule. We are inviting comments about this interim rule as it relates to small entities. In particular, we are interested in determining the number and kind of small entities who may incur benefits or costs from implementation of this rule and the economic impact of those benefits or costs.

In accordance with 21 U.S.C. 111–113, 114a, 115, 117, 120, 123, and 134a, the Secretary of Agriculture has the authority to promulgate regulations and take measures to prevent the introduction into the United States and the interstate dissemination within the United States of communicable diseases of livestock and poultry, and to pay claims growing out of the destruction of animals. Animal health regulations promulgated by the Department under this authority include those specifically addressing control programs and indemnity payments for tuberculosis (part 50), brucellosis (part 51), pseudorabies (part 52), and scrapie (part 54), and regulations in part 53 regarding payment of claims for other diseases.

Program Description and Benefits

ISA is recognized to cause considerable and growing economic losses. In 2002, the Secretary of Agriculture authorized the transfer from the Commodity Credit Corporation of $8.29 million as one part of a 2-year ISA indemnity and control program. Most of this money will be used for indemnity costs, and the remainder will be used for disposal, cleanup, epidemiology, and surveillance. Under this rule, subject to the availability of funding, APHIS may pay up to 60 percent of the fair market value of the fish destroyed, and the amount paid per fish will likely fluctuate during the course of the ISA indemnity program. Participation may be limited if funds are exhausted due to increases in the fair market value above our current estimates.

This interim rule provides Federal indemnification of up to 60 percent of the fair market value, as determined by APHIS based on industry production costs, for fish infected with or exposed to ISA. Previously, there was no such indemnification program.

The farmed Atlantic salmon industry in Maine is estimated to be currently producing over 15,000 tons (or 30 million lbs.) of fish per year. Production and value of production is increasing rapidly. In 2000, production value is estimated to have surpassed $100 million in Maine. Maine's farmed Atlantic salmon industry directly employs approximately 1,000 people, primarily in Washington and Hancock Counties, and it is estimated that an additional 2,500 people have jobs that directly depend on the Maine's farmed Atlantic salmon industry. There are approximately 28 to 33 employees per every million pounds of product output. The amount of fish stock per farm varies; currently there are 26 active pen sites and 45 permitted pen sites, and, on average, the number of fish per site is 350,000.

Value Determination for Non-Marketable Animals

Under this rule, an appraiser determines the fair market value of fish to be destroyed. Value is based on age; as salmon mature, their value increases significantly. Initially, salmon smolts are raised in freshwater pens for approximately 14 or 15 months. On average, these smolts weigh about 0.25 lbs. and carry no market value. On or about May 1 of each year, operators move salmon into saltwater pens, where they grow at a rapid pace. Therefore, salmon that are 16 months old have actually only been in a saltwater pen for approximately 1 month. Salmon grow approximately 0.5 to 1 lb. each month, except for the coldest winter months. During that first winter (December to March), when salmon are between 21 to 24 months, their weight stagnates at approximately 3 lbs. This weight stagnation process occurs each year, and in the spring, salmon resume growing at their previous pace. Typically, a producer strives to harvest fish when they are the ideal market age of 38 to 42 months old (about 24 to 28 months in a saltwater pen, or about the time they reach 10 to 14 lbs.).

We are still working, in cooperation with the State of Maine and the Maine salmonid industry, to finalize an indemnity schedule that accurately reflects per-fish production costs. Based on information submitted from producers, it appears that average production costs per fish may range from approximately $2.59 for a 15- to 16-month-old fish (1 month in a saltwater pen) to about $13.38 for a 38- to 42-month-old fish (approximately 28 months in a saltwater pen). Paid at the 60 percent rate provided for by this rule, indemnity payments based on those production costs would range from $1.55 (1 month in pen) to $8.03 (28 months in pen) per fish before considering salvage value. These figures are, however, preliminary and are intended to serve as an example; we anticipate that the indemnity schedule will be finalized in the near future. At that point, we will make the schedule available through the person listed under **FOR FURTHER INFORMATION CONTACT.**

Between December 2001 and February 2002, APHIS, with the cooperation with the State of Maine and affected producers, depopulated just over 1.42 million exposed or infected salmon in Maine. Specifically, there were 718,212 salmon removed from 3 sites that had been in saltwater pens for 10 months, and 706,187 salmon removed from 4 sites that had been in saltwater pens for

9 months. As all these fish had been in pens for only 9 or 10 months, they were too small to be marketable for rendering or processing (i.e., there will not be any salvage value for these fish). Average production costs are estimated at $5.40 per fish for the 10-month-old fish and $5.05 per fish for the 9-month-old fish. At the 60 percent rate provided for by this rule, we estimate indemnity payments of $2,327,007 for the 10-month-old fish and $2,139,747 for the 9-month-old fish, for a total indemnity of $4,466,754. Again, it is important to note that these figures are preliminary.

Salvage Value—Value Determination for Marketable Animals

Under this rule, salmon producers have the option of selling stock for rendering or other processing. The prices offered for salmon sold for rendering or processing are based on a number of criteria, but primarily consider the weight of the salvageable portion of the fish. These prices are offered by the processors; the prices for fish sold for salvage will be reported to APHIS. We will subtract any salvage value gained at slaughter from the indemnity payment.

Cost Benefit Analysis

As noted previously, none of the estimated 1.42 million fish depopulated since December 2001 weighed enough to be salvageable. (Because young, small fish are not marketable for processing and/or rendering, any possibility of salvage value is dependent on the salmon reaching 29 months of age, i.e. when they have been in a saltwater pen approximately 15 months and weigh approximately 5.5 to 6 lbs.) If few or no fish can be sold for salvage, then indemnity costs rise accordingly. Since we can not speculate when, during the salmon growth/aging process it may become necessary to depopulate a particular pen, it is impossible for us to determine how indemnity costs may fluctuate over the 2 years of the program.

There is one vital benefit to this action: The entire farmed Atlantic salmon industry in Maine is at risk if ISA is not controlled. The benefits of keeping this $100 million dollar per year industry viable outweighs the cost of this program. Additionally, this action will provide salmon owners with a financial incentive to identify and destroy their ISA infected and/or exposed fish, thus arresting the spread of the disease and accelerating eradication efforts. Those producers who have not been participating in the ISA control program will now have an incentive to do so. Several benefits flow from this action. First, it will reduce costs to the Maine salmon industry from animal mortality, costs from possible State regulatory actions, and trade restrictions on U.S. salmon product exports. Second, an aggressive program now, while the number of known affected pens is reasonably small, may obviate the need for higher future Federal costs to contain a more widespread outbreak.

This action may also reduce the impact of trade restrictions due to ISA. When ISA emerged in Maine, Chile and the European Union prohibited the importation of trout and salmonid eggs from Washington, Maine, and Idaho; the resulting trade loss is estimated at $2 million for 2001. The establishment of an effective ISA control program may result in the removal or relaxation of the restrictions imposed by those regions.

This rule will also produce third-party trade benefits by demonstrating to trading partners the intent and ability of the United States to protect its animal industries, thus enhancing our ability to negotiate access to foreign markets.

This action can also be expected to reduce potential future eradication program costs. Canada has been battling ISA for several years; from 1998 to 2000, fish farmers in that country lost approximately $70 million (in U.S. dollars). Canada's Provincial and Federal Governments have contributed over $29.5 million (in U.S. dollars) to compensate salmon farmers. As a result of early intervention, based on a compensation program with enough financial incentive to encourage active participation among salmon farmers, Canada has reduced the incidence of ISA from 18 infected sites in 1998 to 4 infected sites in 2001.

Options Considered

In assessing the need for this interim rule, we identified three alternatives. The first was to maintain the status quo, where State efforts are supported by Federal technical assistance but not by Federal compensation programs or interstate movement restrictions. We rejected this option because it does not fully address the risks associated with a more widespread ISA epidemic. While Maine has the authority to quarantine a pen site once it is known to be infected with ISA, the State lacks the resources to conduct the comprehensive testing and traceback activities that are necessary to identify newly infected sites. States also lack authority to directly regulate interstate commerce in salmon. Finally, while State quarantines are an important tool, quarantining a pen site does not eliminate the risk, since people may accidentally or deliberately violate the quarantine. Making Federal indemnity funds available serves as a powerful incentive for producers to participate in the ISA control program and for owners of infected sites to depopulate, which are factors that greatly reduce the risk of further spread of ISA.

The second option would have been to provide financial and technical assistance to Maine's farmed salmon industry for continuation and expansion of a variety of pen site management practices to reduce or eliminate ISA. Although this option may be less costly than the option we chose, option 3 below, we did not select it because it does not allow us to advance the ISA control program as quickly or effectively as the chosen option. However, APHIS will continue to work with industry and the State of Maine to further develop ISA management practices to preserve and increase the reduction in ISA levels that the indemnity program is expected to achieve.

The third option, to provide indemnity payments to depopulate ISA infected and/or exposed fish, was the one we chose. Depopulation of infected animals, which clears the way for a disinfection program, is currently the single most effective way to eliminate ISA. Under this alternative, producers will gain partial compensation for ISA infected and or/exposed fish.

Potential Impact on Small Entities

This interim rule establishes a voluntary program that allows salmon producers in Maine to be paid indemnity for ISA infected and exposed animals. Many producers, as well as a number of processors who render salmon into food and non-food byproducts may be small businesses. To the extent that the interim rule contributes to the elimination of ISA in Maine, all salmon producers should benefit over the long term. In the short term, the economic impact on producers will vary.

The U.S. Small Business Administration (SBA) defines a small fin fish and/or fish hatchery operation as one that has per-farm gross receipts of less that $750,000. There are 12 Atlantic salmon farms in the State of Maine. Collectively, they employ approximately 1,200 workers in 25 separate pen site locations; also, another 2,500 jobs, primarily in processing, rendering, or transport directly depend on these operations. The gross receipts of the affected salmon producers is unknown. However, it is reasonable to assume that most exceed the SBA small entity threshold because, collectively,

these 12 firms produced gross receipts in excess of $100 million in 2000.

This interim rule contains various recordkeeping and reporting requirements. These requirements are described in this document under the heading ''Paperwork Reduction Act.''

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0192 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. 01–126–1, Regulatory Analysis and Development, PPD, APHIS, station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 01–126–1 and send your comments within 60 days of publication of this rule.

This interim rule amends the regulations regarding the control and eradication of certain communicable diseases of livestock or poultry to provide for the payment of indemnity to producers in the State of Maine for fish destroyed due to ISA. In order to take part in the indemnity program, producers must enroll in the cooperative ISA control program administered by APHIS and the State of Maine. Program participants must inform the ISA Program Veterinarian in writing of the name of their accredited veterinarian; develop biosecurity protocols and a site-specific ISA action plan; submit fish inventory and mortality information; assist APHIS or State officials with on-site disease surveillance, testing, and biosecurity audits; and complete an appraisal and indemnity claim form.

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

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

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

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

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

Estimate of burden: Public reporting burden for this collection of information is estimated to average 4.209469153 hours per response.

Respondents: Program participants and their employees, APHIS accredited veterinarians, State animal health officials, and State personnel who may perform appraisals.

Estimated annual number of respondents: 110.

Estimated annual number of responses per respondent: 6.33636.

Estimated annual number of responses: 697.

Estimated total annual burden on respondents: 2,934 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

List of Subjects in 9 CFR Part 53

Animal diseases, Indemnity payments, Livestock, Poultry and poultry products.

Accordingly, we are amending 9 CFR part 53 as follows:

PART 53—FOOT-AND-MOUTH DISEASE, PLEUROPNEUMONIA, RINDERPEST, AND CERTAIN OTHER COMMUNICABLE DISEASES OF LIVESTOCK OR POULTRY

1. The authority citation for part 53 continues to read as follows:

Authority: 21 U.S.C. 111, 114, and 114a; 7 CFR 2.22, 2.80, and 371.4.

2. In § 53.1, the definition of Disease is amended by adding the words ''infectious salmon anemia,'' after the word ''influenza,'' and by adding, in alphabetical order, definitions of *accredited veterinarian* and *ISA Program Veterinarian* to read as follows:

§ 53.1 Definitions.

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with part 161 of this chapter to perform functions specified in parts 1, 2, 3, and 11 of subchapter A of this chapter and subchapters B, C, and D of this chapter, and to perform functions required by cooperative State-Federal disease control and eradication programs.

* * * * *

ISA Program Veterinarian. The APHIS veterinarian assigned to manage the infectious salmon anemia program for APHIS in the State of Maine and who reports to the Area Veterinarian in Charge.

* * * * *

§ 53.2 [Amended]

3. Section 53.2 is amended as follows:

a. In paragraph (a), by removing the words ''Director of Division'' and adding the word ''Administrator'' in their place, and by removing the citation ''§ 53.1(f)'' and adding the citation ''§ 53.1'' in its place.

b. In paragraph (b), by removing the words ''Director of Division'' and adding the word ''Administrator'' in their place, and by removing the word ''percent)'' and adding the words ''percent, and in the case of infectious salmon anemia, up to 60 percent)'' in its place.

4. In § 53.4, paragraph (a) is revised to read as follows:

§ 53.4 Destruction of animals.

(a) Animals affected by or exposed to disease shall be killed promptly after appraisal and disposed of by burial or burning, unless otherwise specifically provided by the Administrator, at his or her discretion. In the case of animals depopulated due to infectious salmon anemia, salvageable fish may be sold for rendering, processing, or any other purpose approved by the Administrator.

If fish retain salvage value, the proceeds gained from the sale of the fish will be subtracted from any indemnity payment from APHIS for which the producer is eligible under § 53.2(b).

* * * * *

5. Section 53.10 is amended by adding a new paragraph (e) to read as follows:

§ 53.10 Claims not allowed.

* * * * *

(e) The Department will not allow claims arising out of the destruction of fish due to infectious salmon anemia (ISA) unless the claimants have agreed in writing to participate fully in the cooperative ISA control program administered by APHIS and the State of Maine. Participants in the ISA control program must:

(1) Establish and maintain a veterinary client-patient relationship with an APHIS accredited veterinarian and inform the ISA Program Veterinarian in writing of the name of their accredited veterinarian at the time the participant enrolls in the ISA program and within 15 days of any change in accredited veterinarians.

(2) Cooperate with and assist in periodic on-site disease surveillance, testing, and reporting activities for ISA, which will be conducted by their APHIS accredited veterinarian or a State or Federal official as directed by the ISA Program Veterinarian.

(3) Develop and implement biosecurity protocols for use at all participant-leased finfish sites and participant-operated vessels engaged in aquaculture operations throughout Maine. A copy of these protocols shall be submitted to the ISA Program Veterinarian at the time the participant enrolls in the ISA program and within 15 days of any change in the protocols.

(4) Develop, with the involvement of the participant's accredited veterinarian and the fish site health manager, a site-specific ISA action plan for the control and management of ISA. A copy of the action plan shall be submitted to APHIS for review at the time the participant enrolls in the ISA program and within 15 days of any change in the action plan.

(5) Participate in the State of Maine's integrated pest management (IPM) program for the control of sea lice on salmonids. A copy of the management plan developed by the participant for the State IPM program shall be submitted to APHIS for review at the time the participant enrolls in the ISA program and within 15 days of any change in the management plan.

(6) Submit to the ISA Program Veterinarian at the time the participant enrolls in the ISA program a complete and current fish inventory information for each participant-leased finfish site with site and cage identifiers. Fish inventory information must include the numbers, age, date of saltwater transfer, vaccination status, and previous therapeutant history for all fish in each participant-leased finfish site.

(7) Maintain, and make available to the ISA Program Veterinarian upon request, mortality data for each participant-leased finfish site and pen in production.

(8) Cooperate with and assist APHIS in the completion of biosecurity audits at all participant-leased finfish sites and participant-operated vessels involved in salmonid aquaculture. (Approved by the Office of Management and Budget under control number 0579–0192).

Done in Washington, DC, this 5th day of April 2002.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 02–8779 Filed 4–10–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF STATE

22 CFR Part 62

[Public Notice 3940]

Exchange Visitor Program; Interim Final Rule

AGENCY: Department of State.

ACTION: Interim final rule with request for comment.

SUMMARY: The Department is revising portions of its existing Exchange Visitor Program regulations. These revisions will correct inaccurate references to related regulations and organizational offices and positions set forth in these regulations.

DATES: This rule is effective April 11, 2002. Written comments regarding this rule will be accepted until May 13, 2002.

ADDRESSES: Comments regarding this rule must be presented in duplicate and addressed as follows: U.S. Department of State, Office of Exchange Coordination and Designation, Bureau of Educational and Cultural Affairs, 301 4th Street, SW., Room 852, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Acting Director, Office of Exchange Coordination and Designation, U.S. Department of State, 301 Fourth Street, SW., Room 852, Washington, DC 20547; telephone (202) 619–6828; fax (202) 401–9809.

SUPPLEMENTARY INFORMATION: The Foreign Affairs Reform and Restructuring Act of 1998, Public Law 105–277, 112 Stat. 2681 et seq., consolidated many of the functions of the former United States Information Agency into the Department of State. One of the functions consolidated was the administrative oversight of the Exchange Visitor Program. Created by the Mutual Educational and Cultural Exchange Act of 1961, as amended, the Exchange Visitor Program designates government and private sector entities to further the public diplomacy efforts of the Federal government by facilitating the entry of foreign nationals into the United States for the purpose of participation in individual exchange programs.

Pursuant to the Congressional restructuring of the foreign affairs functions, the Exchange Visitor Program regulations formerly set forth at 22 CFR part 514 were renumbered as 22 CFR part 62 when this function was absorbed into the Department. However, specific references to the former part 514 in subparts A, B, C, D and E were overlooked. References to organizational offices and positions were also not corrected.

The revisions set forth in this rule correct the inaccurate references to the former part 514 and substitute references to the new part 62. References to now non-existent organizational offices and positions are also deleted. Corresponding Department offices and positions are substituted.

The Department invites comments regarding this interim final rule. The Department will accept comments for 30 days following publication of this interim rule. A final rule will be adopted following Department review of all comments received.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department is publishing this rule as an interim rule, with a 30-day provision for post-promulgation public comments, based on the ''good cause'' exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). Given that the proposed changes are technical in nature, the Department finds it unnecessary to provide notice and comment prior to adoption of this rule.

Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(b) of the Regulatory Flexibility Act, the Department has assessed the potential impact of this rule, and certifies that this rule is not expected to have a

significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 12866

The Department of State does not consider this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section (6)(a)(3)(A).

Executive Order 13132

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

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 62

Cultural exchange programs.

Accordingly, 22 CFR part 62 is amended as follows:

PART 62—EXCHANGE VISITOR PROGRAM

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

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431–1442, 2451–2460; Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105–277, 112 Stat. 2681 et seq.; Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp. p. 200; E.O.12048 of March 27, 1978; 3 CFR, 1978 Comp. p. 168.

2. In subparts A, B and C, remove ''514'' and add in its place ''62'' in the following places:

a. Section 62.2;
b. Section 62.3(a)(3) and (b)(1);
c. Section 62.4(a)(2);
d. Section 62.5(a), (c)(2) and (c)(5);
e. Section 62.6(a) and (b);
f. Section 62.7(c);
g. Section 62.9(g);
h. Section 62.11(d);
i. Section 62.13(a)(2) and (a)(7);
j. Section 62.15(d) and (g);
k. Section 62.20(a)(1), (a)(2), (d)(ii)(A) and (d)(ii)(C);
l. Section 62.21(d), (e) and (g);
m. Section 62.22(a), (c)(1) and (j);
n. Section 62.23(d) and (e);
o. Section 62.24(d) and (f);
p. Section 62.25(b)(2), (e), (g) and (k);
q. Section 62.26(a)(1), (a)(2), (a)(3), (e)(1), (e)(2) and (f);
r. Section 62.27(b)(3);
s. Section 62.28(b);
t. Section 62.29(c);
u. Section 62.30(c);
v. Section 62.31(d), (f), (i), (m) and (n);
w. Section 62.32(b);
x. Section 62.40(a)(4); and
y. Section 62.45(d)(3) and (d)(6) and (e)(2) and (f)(1).

3. In the table below, for each section indicated in the left column, remove the reference indicated in the middle column, and add in its place the reference indicated in the right column:

Section	Remove	Add
62.14(g)	§ 514.14(a) above	paragraph (a) of this section.
62.20(f)	§ 514.20(g)	paragraph (g) of this section.
62.20(g)(2)(ii)	§514.20(g)(2)(i) above	paragraph (g)(2)(i) of this section.
62.20(g)(2)(ii)	§514.20(g)(1)	paragraph (g)(1) of this section.
62.20(j)(1)	§ 514.20(i)	paragraph (i) of this section.
62.20(j)(2)	§ 514.20(i)	paragraph (i) of this section.
62.20(j)(3)	§ 514.20(i)	paragraph (i) of this section.
62.20(j)(4)	§ 514.20(i)	paragraph (i) of this section.
62.22(f)(1)	§ 514.22(d)	paragraph (d) of this section.
62.22(f)(3)	§ 514.22(n)	paragraph (n) of this section.
62.22(g)	§ 514.22(d)(1)(iii) above	paragraph (d)(1)(iii) of this section.
62.22(n)(2)	§ 514.22(k), supra	paragraph (k) of this section.
62.22(n)(2)	§ 514.43, infra	62.43.
62.22(n)(3)	§ 514.22(m)	paragraph (m) of this section.
62.23(a)	§ 514.23	this section.
62.23(e)(5)	§ 514.23(f)	paragraph (f) of this section.
62.23(f)(5)(ii)(A)	§514.23(f)	paragraph (f) of this section.
62.23(f)(5)(ii)(C)	§514.23(f)(3) and (4)	paragraph (f)(3) and (4) of this section.
62.23(h)(1)(i)(A)	§514.23(e)	paragraph (e) of this section.
62.23(h)(1)(ii)	§514.23(f)	paragraph (f) of this section.
62.23(h)(2)(ii)	§514.23(f)	paragraph (f) of this section.
62.24(a)	§ 514.24	this section.
62.24(d)(1)	§ 514.24(c)	paragraph (c) of this section.
62.26(b)	§ 514.26(a)(1) through (3)	paragraphs (a)(1) through (3) of this section.
62.27(f)	§ 514.27(b) and § 514.27(e)	paragraphs (b) and (e) of this section.
62.28(a)	§ 514.28	this section.
62.29(a)	§ 514.29	this section.

4. In addition to the amendments set forth above, amend subparts A, B, and C as follows:

a. Remove ''Form IAP–66'' and add in its place ''Form DS–2019'' in the following places:

i. Section 62.2;
ii. Section 62.5(a);
iii. Section 62.10(d) and (e)(1);
iv. Section 62.11(d);
v. Section 62.12(b), (c), (c)(4), (d)(2), (d)(3), (d)(4), (e)(2) and (e)(3);
vi. Section 62.13(c)(1);
vii. Section 62.15(e);
viii. Section 62.20(d)(ii), (e), (f) and (h);
ix. Section 62.21(f);
x. Section 62.23(d), (f)(3)(ii), (f)(4)(iii), (h)(1)(i) and (h)(2)(i);
xi. Section 62.24(e) and (g);
xii. Section 62.25(m);
xiii. Section 62.26(g) and (h);
xiv. Section 62.27(c)(1), (c)(1)(i), (c)(1)(ii), (c)(2) and (d);
xv. Section 62.28(e);
xvi. Section 62.29(f) and (g);
xvii. Section 62.30(i);
xviii. Section 62.41(b) and (e);
xix. Section 62.42(b)(2), (c) and (c)(1);
xx. Section 62.43(b); and
xxi. Section 62.45(a), (c)(1), (c)(2), (c)(3), (c)(4), (c)(4)(ii)(D), (d)(1), (e)(1), (h)(1)(ii), (h)(2)(ii), (i)(2)(i), (i)(2)(ii) and (k).

b. Remove ''Forms IAP–66'' and add in its place ''Forms DS–2019'' in the following places:

i. Section 62.10(d);
ii. Section 62.11(d);
iii. Section 62.12 heading; introductory text, (a), (d)(1), (e)(1) and (e)(3);
iv. Section 62.13(a)(7);
v. Section 62.15(e)(1), (e)(2), (e)(3) and (e)(4);
vi. Section 62.27(d); and
vii. Section 62.45(c)(4)(i), (h)(1)(i) and (h)(2)(i).

c. Remove ''form IAP–66'' and add in its place ''Form DS–2019'' in the following place:

i. Section 62.32(h)

d. Remove ''Form IAP–37'' and add in its place ''Form DS–3036'' in the following place:

i. Section 62.5(a)

5. Subpart D is revised to read as follows:

Subpart D—Sanctions

§ 62.50 Sanctions.

(a) *Reason for sanctions.* The Department of State may, upon a determination by the Office of Exchange Coordination and Designation (''ECD''), Bureau of Educational and Cultural Affairs, impose sanctions against a sponsor which has:

(1) Willfully or negligently violated one or more provisions of this part;

(2) Evidenced a pattern of willful or negligent failure to comply with one or more provisions of this part;

(3) Committed an act of omission or commission which has or could have the effect of endangering the health, safety, or welfare of an exchange visitor; or

(4) Committed an act or acts which may have the effect of bringing the Department of State or the Exchange Visitor Program into notoriety or disrepute.

(b) *Lesser sanctions.* (1) In order to ensure full compliance with the regulations in this part, the Department of State, in its discretion and depending on the nature and seriousness of the violation, may impose any or all of the following sanctions (''lesser sanctions'') on a sponsor for any of the reasons set forth in paragraph (a) of this section:

(i) A written reprimand to the sponsor, with a warning that repeated or persistent violations of the regulations in this Part may result in suspension or revocation of the sponsor's exchange visitor program designation, or other sanctions as set forth in this section;

(ii) A declaration placing the exchange visitor sponsor on probation, for a period of time determined by the Department of State in its discretion, signifying a pattern of serious willful or negligent violation of regulations such that further violations could lead to suspension or revocation;

(iii) A corrective action plan designed to cure the sponsor's violations; or

(iv) A limitation or reduction in the authorized number of exchange visitors in the sponsor's program or in the geographic area of the sponsor's recruitment or activity.

(2) Within ten (10) calendar days of service of the written notice to the sponsor imposing any of the sanctions set forth in this paragraph (b), the sponsor may submit to ECD any statement or information, including, if appropriate, any documentary evidence or affidavits in opposition to or mitigation of the sanction, and may request a conference. Upon its review and consideration of such submission, the Department of State may, in its discretion, modify, withdraw, or confirm such sanction. All materials submitted by the sponsor shall become a part of the sponsor's file with ECD. The decision of ECD is not appealable with regard to lesser sanctions in paragraphs (b)(1)(i) through (iv) of this section, if:

(i) The proposed limitation in the size of the sponsor's program is equivalent to 10 percent or less of the number of authorized visitors in the sponsor's program during the previous calendar year; or

(ii) The proposed limitation in the size of the sponsor's program will not cause a significant financial burden for the sponsor.

(c) *Suspension or significant program limitation.* (1) Upon a finding that a suspension, or a reduction in the sponsor's program equivalent to a number greater than 10 percent of the number of authorized visitors, is warranted for any of the reasons set forth at paragraph (a) of this section, ECD shall give written notice to the sponsor of the Department of State's intent to impose the sanction, specifying therein the reasons for such sanction and the effective date thereof, which shall not be sooner than thirty (30) calendar days after the date of the letter of notification.

(2) Prior to the proposed effective date of such sanction, the sponsor may submit a protest to ECD, setting forth therein any reasons why suspension should not be imposed, and presenting any documentary evidence in support thereof, and demonstrating that the sponsor is in compliance with all lawful requirements. All materials submitted by the sponsor shall become a part of the sponsor's file with ECD.

(3) ECD shall review and consider the sponsor's submission and, within seven (7) calendar days of receipt thereof, notify the sponsor in writing of its decision on whether the sanction is to be affected. In the event that the decision is to impose the sanction, such notice shall inform the sponsor of its right to appeal the sanction and of its right to a formal hearing thereon.

(4) The sponsor may within ten (10) calendar days after receipt of the aforesaid notice effecting the sanction, appeal the sanction to the Exchange Visitor Program Designation, Suspension and Revocation Board (''Board'') by filing a notice of appeal with the Principal Deputy Assistant Secretary of the Bureau of Educational and Cultural Affairs. The filing of the notice of appeal shall serve to stay the effective date of the sanction pending appeal.

(5) Upon receipt of the notice of appeal, the Principal Deputy Assistant Secretary, or his or her designee, shall, within ten (10) calendar days, convene the Board. Thereafter, proceedings before the Board shall follow the regulations set forth in paragraph (i) of this section.

(d) *Summary suspension.* (1) ECD may, upon a finding that a sponsor has willfully or negligently committed a serious act of omission or commission

which has or could have the effect of endangering the health, safety, or welfare of an exchange visitor, and upon written notice to the sponsor specifying the reason therefore and the effective date thereof, notify the sponsor of the Department of State's intent to suspend the designation of the sponsor's program for a period not to exceed sixty (60) calendar days.

(2) No later than three (3) calendar days after receipt of such notification, the sponsor may submit a rebuttal to ECD, setting forth therein any reasons why a suspension should not be imposed.

(3) The sponsor may present any statement or information in such protest, including, if appropriate, any documentary evidence or affidavits in opposition to or mitigation of the sanction, and demonstrating that the sponsor is in compliance with all lawful requirements. All materials submitted by the sponsor shall become a part of the sponsor's file with ECD. Within three (3) calendar days of receipt of such submissions, ECD shall notify the sponsor in writing of its decision whether to effect the suspension. In the event the decision is to effect the suspension, such notice shall advise the sponsor of its right to appeal the suspension and of its right to a formal hearing thereon.

(4) The sponsor may, within ten (10) calendar days after receipt of the aforesaid notice continuing the suspension, appeal the suspension to the Board by filing a notice of appeal with the Principal Deputy Assistant Secretary of the Bureau of Educational and Cultural Affairs. The filing of the notice of appeal of a summary suspension shall not serve to stay the suspension pending appeal.

(5) Upon receipt of the notice of appeal, the Principal Deputy Assistant Secretary, or his or her designee shall, within ten (10) calendar days, convene the Board. Thereafter, proceedings before the Board shall follow the regulations set forth in paragraph (i) of this section.

(e) *Revocation.* (1) The Principal Deputy Assistant Secretary, or his or her designee, may, for any reason set forth at paragraph (a) of this section, give the sponsor not less than thirty (30) calendar days notice in writing of its intent to revoke the sponsor's exchange visitor program designation, specifying therein the grounds for such revocation and the effective date of the revocation. Revocation need not be preceded by the imposition of a summary suspension, a suspension, or any lesser sanctions.

(2) Within ten (10) calendar days of receipt of the notice of intent to revoke in paragraph (e)(1) of this section, the sponsor shall have an opportunity to show cause as to why such revocation should not be imposed, and may submit to the Principal Deputy Assistant Secretary any statement of information, including, if appropriate, any documentary evidence or affidavits in opposition to or mitigation of the violations charged, and demonstrating that the sponsor is in compliance with all lawful requirements. All materials submitted by the sponsor shall become a part of the sponsor's file with ECD.

(3) The Principal Deputy Assistant Secretary, or his or her designee, shall review and consider the sponsor's submission and, thereafter, notify the sponsor in writing of its decision on whether the revocation is to be effected. In the event that the decision is to effect the revocation, such notice shall advise the sponsor of its right to appeal the revocation and of its right to a formal hearing thereon.

(4) The sponsor may, within twenty (20) calendar days after receipt of the notice effecting the revocation in paragraph (e)(3) of this section, appeal the revocation to the Board by filing a notice of appeal with the Principal Deputy Assistant Secretary. The filing of the notice of appeal shall serve to stay the effective date of the revocation pending appeal.

(5) Upon receipt of the notice of appeal, the Principal Deputy Assistant Secretary, or his or her designee shall, within ten (10) calendar days, convene the Board. Thereafter, proceedings before the Board shall follow the regulations set forth in paragraph (i) of this section.

(f) *Responsible officers.* (1) The Department of State may direct a sponsor to summarily suspend, suspend or revoke the appointment of a responsible officer or alternate responsible officer for any of the reasons set forth in paragraph (a) of this section.

(2) In the event that such action is directed, the sponsor shall be entitled to all of the rights of review or appeal that are accorded to a sponsor under paragraphs (b), (c), (d), and (e) of this section.

(g) *Denial of application for redesignation.* (1) ECD shall give an applicant for redesignation not less than thirty (30) calendar days notice in writing of its intentions to deny the application for exchange visitor program redesignation, specifying therein the grounds for such denial.

(2) Within ten (10) calendar days of receipt of the aforesaid notice of intent to deny the application in paragraph (g)(1) of this section, the applicant shall have an opportunity to demonstrate why the application should be approved, and may submit to ECD any statement or information including, if appropriate, any documentary evidence or affidavits in support of its application.

(3) ECD shall review and consider the applicant's submission and thereafter notify the applicant in writing of its decision on whether the application for redesignation will be approved. In the event that the decision is to deny the applicant, such notice shall advise the applicant of its right to appeal the denial and of its right to a formal hearing thereon.

(4) The applicant may, within twenty (20) calendar days after receipt of the notice of denial in paragraph (g)(3) of this section, appeal the denial to the Board by filing a notice of appeal with the Principal Deputy Assistant Secretary.

(5) Upon receipt of the notice of appeal the Principal Deputy Assistant Secretary, or his or her designee shall, within ten (10) calendar days, convene the Board. Thereafter, proceedings before the Board shall follow the regulations set forth in paragraph (i) of this section.

(h) *The Exchange Visitor Program Designation, Suspension, and Revocation Board.* (1) The Exchange Visitor Program Designation, Suspension, and Revocation Board (''Board'') shall consist of:

(i) The Deputy Assistant Secretary for Academic Programs of the Bureau of Educational and Cultural Affairs, or his or her designee, who shall also serve as presiding officer of the Board;

(ii) The Executive Director, Office of the Executive Director of the Bureau of Educational and Cultural Affairs, or his or her designee; and

(iii) The Director, Office of Policy and Evaluation of the Bureau of Educational and Cultural Affairs, or his or her designee.

(2) The Office of the Legal Adviser of the Department of State shall appoint an attorney from the Office of the Legal Adviser to present the case to the Board on behalf of the Department. Such attorney shall not take part in the deliberations of the Board.

(3) The Office of the Legal Adviser of the Department of State shall also appoint an attorney in the Office of the Legal Adviser to serve as a legal adviser to the Board. Such attorney shall not have had any substantial prior involvement with the particular case pending before the Board.

(i) *General powers of the Board.* At any hearing before the Board pursuant to this Part, the Board may:

(1) Administer oaths and affirmations;

(2) Rule on offers of proof and receive any oral or documentary evidence;

(3) Require the parties to submit lists of proposed witnesses and exhibits, and otherwise regulate the course of the hearing;

(4) Hold conferences for the settlement or simplification of the issues by consent of the parties;

(5) Dispose of motions, procedural requests, or similar matters; and

(6) Make decisions, which shall include findings of fact and conclusions of law on all the material issues of fact, law or discretion presented on the record, and the appropriate sanction or denial thereof.

(j) *Proceedings before the Board.* The following procedures shall govern all designation, suspension, summary suspension, and revocation proceedings before the Board:

(1) Upon being convened, the Board shall schedule a hearing, within ten (10) calendar days, at which hearing the parties may appear on their own behalf or by counsel, present oral or written evidence, and cross-examine witnesses. A substantially verbatim record of the hearing shall be made and shall become a part of the record of the proceeding;

(2) At the conclusion of the hearing, the Board shall promptly review the evidence and issue a written decision within ten (10) calendar days, signed by a majority of the members, stating the basis for its decision. The decision of the majority shall be the decision of the Board. If a Board member disagrees with the majority, the member may write a dissenting opinion;

(3) If the Board decides to affirm the suspension, summary suspension, revocation, or denial of redesignation, a copy of its decision shall be delivered to ECD, the sponsor, the Immigration and Naturalization Service, and the Bureau of Consular Affairs of the Department of State. ECD, at its discretion, may distribute the Board's decision as it deems appropriate; and

(4) The suspension, revocation, or denial of designation shall be effective as of the date of the Board's decision.

(k) *Effect of suspension, summary suspension, revocation, or denial of redesignation.* A sponsor against which an order of suspension, summary suspension, revocation, or denial of redesignation has been entered shall not thereafter issue any Certificate of Eligibility for Exchange Visitor Status, advertise, recruit, or otherwise promote its program, and under no circumstances shall the sponsor facilitate the entry of an exchange visitor. Suspension, summary suspension, revocation, or denial of redesignation shall not invalidate any Certificate of Eligibility for Exchange Visitor Status issued prior to the effective date of the suspension, summary suspension, revocation, or denial of redesignation, nor shall the suspension, summary suspension, revocation, or denial of redesignation in any way diminish or restrict the sponsor's legal or financial responsibilities to existing program participants.

(l) *Miscellaneous*—(1) *Computation of time.* In computing any period of time prescribed or allowed by the regulations in this section, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a federal legal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, or federal legal holidays shall be excluded in the computation.

(2) *Service of notice on sponsor.* When used in this part the terms ''written notice to the sponsor'' shall mean service of written notice by mail, delivery or facsimile, upon either the president, managing director, responsible officer, or alternate responsible officer of the sponsor.

6. Subpart E is revised to read as follows:

Subpart E—Termination and Revocation of Programs

Sec.
62.60 Termination of designation.
62.61 Revocation.
62.62 Responsibilities of the sponsor upon termination or revocation.

Subpart E—Termination and Revocation of Programs

§ 62.20 Termination of designation.

Designation shall be terminated when any of the circumstances set forth in this section occur.

(a) *Voluntary termination.* A sponsor may voluntarily terminate its designation by notifying the Department of State of such intent. The sponsor's designation shall terminate upon such notification. Such sponsor may reapply for designation.

(b) *Inactivity.* A sponsor's designation shall automatically terminate for inactivity if the sponsor fails to comply with the minimum size or duration requirements, as specified in § 62.8 (a) and (b), in any twelve month period. Such sponsor may reapply for program designation.

(c) *Failure to file annual reports.* A sponsor's designation shall automatically terminate if the sponsor fails to file annual reports for two consecutive years. Such sponsor is eligible to reapply for program designation upon the filing of the past due annual reports.

(d) *Change in ownership or control.* An exchange visitor program designation is not assignable or transferable. A major change in ownership or control automatically terminates the designation. However, the successor sponsor may apply to the Department of State for redesignation and may continue its exchange visitor activities while approval of the application for redesignation is pending before the Department of State:

(1) With respect to a for-profit corporation, a major change in ownership shall be deemed to have occurred when thirty-three and one-third percent (33⅓ percent) or more of its stock is sold or otherwise transferred within a 12 month period;

(2) With respect to a not-for-profit corporation, a major change of control shall be deemed to have occurred when fifty-one percent or more of the board of trustees, or other like body vested with its management, is replaced within a 12-month period.

(e) *Loss of licensure or accreditation.* A sponsor's designation shall automatically terminate in the event that the sponsor fails to remain in compliance with local, state, federal, or professional requirements necessary to carry out the activity for which it is designated, including loss of accreditation or licensure.

(f) *Failure to apply for redesignation.* Prior to the conclusion of its current designation period, the sponsor is required to apply for redesignation pursuant to the terms and conditions of § 62.7. Failure to apply for redesignation will result in the automatic termination of the sponsor's designation. If so terminated, the former sponsor may apply for a new designation, but the program activity will be suspended during the pendency of the application.

§ 62.61 Revocation.

A designation may be terminated by revocation for cause as specified in § 62.50. A sponsor whose designation has been revoked may not apply for a new designation within a five-year period.

§ 62.62. Responsibilities of the sponsor upon termination or revocation.

Upon termination or revocation of its designation, the sponsor shall:

(a) Fulfill its responsibilities to all exchange visitors who are in the United States at the time of the termination or revocation;

(b) Notify exchange visitors who have not entered the United States that the program has been terminated unless a transfer to another designated program can be obtained; and

(c) Return all Certificate of Eligibility Forms in the sponsor's possession to the Department of State within thirty (30) calendar days of program termination or revocation.

Dated: March 1, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–6072 Filed 4–10–02; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF DEFENSE

National Reconnaissance Office

32 CFR Part 326

[NRO Privacy Act Program]

Privacy Act of 1974; Implementation

AGENCY: National Reconnaissance Office, DoD.

ACTION: Final rule.

SUMMARY: The National Reconnaissance Office (NRO) is exempting three Privacy Act systems of records (QNRO–4, QNRO–19, and QNRO–21). The reasons for exempting these systems of records is to exempt those records contained in QNRO–04 when an exemption has been previously claimed for the records in another Privacy Act system of records. The exemption is intended to preserve the exempt status of the record when the purposes underlying the exemption for the original records are still valid and necessary to protect the contents of the records; the exemptions for QNRO–19 and QNRO–21 are intended to increase the value of the systems of records for law enforcement purposes, to comply with prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the systems of records.

EFFECTIVE DATE: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Freimann at (703) 808–5029.

SUPPLEMENTARY INFORMATION: The proposed rule was previously published on January 14, 2002, at 67 FR 1673. No comments were received; therefore, the rule is being adopted as final.

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (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 this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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.

List of Subjects in 32 CFR Part 326

Privacy.

1. The authority citation for 32 CFR part 326 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

2. Chapter I, subchapters O and P of title 32 of the CFR are amended by adding 32 CFR part 326 to subchapter O and removing it from subchapter P.

3. Section 326.17 is amended by adding paragraphs (h), (i) and (j) to read as follows:

§ 326.17 Exemptions.

* * * * *

(h) QNRO–19

(1) *System name:* Customer Security Services Personnel Security Files.

(2) *Exemptions:* (i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) and/or (k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(2) and (k)(5).

(4) *Reasons:* (i) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutable interest by the NRO or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(ii) From subsections (d)(1) through (d)(4), and (f) because providing access to investigatory records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigatory purposes and is exempt from the access provisions of subsections (d) and (f).

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NRO will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

(vi) Consistent with the legislative purpose of the Privacy Act of 1974, the NRO will grant access to nonexempt material in the records being maintained. Disclosure will be governed by NRO's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal or civil violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered; the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated in this paragraph. The decisions to release information from these systems will be made on a case-by-case basis.

(i) NRO–21

(1) *System name:* Personnel Security Files.

(2) *Exemptions:* (i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) and/or (k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(2) and (k)(5).

(4) *Reasons:* (i) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutable interest by the NRO or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(ii) From subsections (d)(1) through (d)(4), and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because this system of records is compiled for law enforcement purposes and is exempt from the access provisions of subsections (d) and (f).

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NRO will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

(vi) Consistent with the legislative purpose of the Privacy Act of 1974, the NRO will grant access to nonexempt material in the records being maintained. Disclosure will be governed by NRO's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered; the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to

release information from these systems will be made on a case-by-case basis.

(j) QNRO–4

(1) *System name:* Freedom of Information Act and Privacy Act Files.

(2) *Exemption:* During the processing of a Freedom of Information Act/Privacy Act request, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those ''other'' systems of records are entered into this system, the NRO hereby claims the same exemptions for the records from those ''other'' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(3) Authority: 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(4) Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, and to preserve the confidentiality and integrity of Federal evaluation materials. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

Dated: April 2, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–8474 Filed 4–10–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 505

[Army Regulation 340–21]

Privacy Act; Implementation

AGENCY: Department of the Army, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Army is adding an exemption rule for the Inspector General Records for law enforcement purposes.

EFFECTIVE DATE: March 12, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The proposed rule was previously published on January 11, 2002, at 67 FR 1421. No comments were received; therefore, the rule is being adopted as final.

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (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 this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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.

List of Subjects in 32 CFR Part 505

Privacy.

PART 505—THE ARMY PRIVACY PROGRAM

Accordingly, 32 CFR part 505 is amended as follows:

1. The authority citation for 32 CFR part 505 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 505.5 is amended by revising paragraphs (e)(1)(i) through (iv) and removing and reserving paragraphs (e)(2) to read as follows:

§ 505.5 Exemptions.

* * * * *

(e) * * *

(1) * * *

(i) *System name:* Inspector General Records.

(ii) *Exemptions:* (A) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(B) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(C) Therefore, portions of the system of records may be exempt pursuant to 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I), and (f).

(iii) *Authority:* 5 U.S.C. 552a(k)(2) and (k)(5).

(iv) *Reason:* (A) From subsection (c)(3) because the release of the disclosure accounting, for disclosures pursuant to the routine uses published for this system, would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(C) From subsection (e)(1) because in the course of criminal investigations information is often obtained concerning the violations of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information is retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(D) From subsections (e)(4)(G) and (e)(4)(H) because this system of records is exempt from individual access pursuant to subsection (k)(2) of the Privacy Act of 1974.

(E) From subsection (e)(4)(I) because of the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(F) From subsection (f) because this system of records has been exempted from the access provisions of subsection (d).

(G) Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Army will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Army's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of this nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated in this paragraph. The decisions to release information from these systems will be made on a case-by-case basis.

(2) [Reserved]

* * * * *

Dated: April 2, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–8476 Filed 4–10–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 806b

[Air Force Instruction 37–132]

Privacy Act; Implementation

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is adding a (j)(2) exemption to an existing exemption rule for the Privacy Act system of records notice F090 AF IG B, Inspector General Records. The (j)(2) exemption will increase the value of the system of records for law enforcement purposes.

EFFECTIVE DATE: March 12, 2002.

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

SUPPLEMENTARY INFORMATION: The proposed rule was previously published on January 11, 2002, at 67 FR 1423. No comments were received; therefore, the rule is being adopted as final.

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (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 this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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.

List of Subjects in 32 CFR Part 806b

Privacy.

PART 806b—AIR FORCE PRIVACY ACT PROGRAM

1. The authority citation for 32 CFR part 806b continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Appendix C to Part 806b is amended by adding paragraph a.(6) and removing and reserving b.(12) to read as follows:

Appendix C to Part 806b—General and Specific Exemptions. * * *

a. * * *

(6) System identifier and name: F090 AF IG B, Inspector General Records.

(i) *Exemption:* (A) Parts of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

(B) Any portion of this system of records which falls within the provisions of 5 U.S.C. 552a(j)(2) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g).

(ii) *Authority:* 5 U.S.C. 552a(j)(2).

(iii) *Reasons:* (A) From subsection (c)(3) because the release of accounting of disclosure would inform a subject that he or she is under investigation. This information would provide considerable advantage to the subject in providing him or her with knowledge concerning the nature of the investigation and the coordinated investigative efforts and techniques employed by the cooperating agencies. This would greatly impede the Air Force IG's criminal law enforcement.

(B) From subsection (c)(4) and (d), because notification would alert a subject to the fact that an open investigation on that individual is taking place, and might weaken the on-going investigation, reveal investigative techniques, and place confidential informants in jeopardy.

(C) From subsection (e)(1) because the nature of the criminal and/or civil investigative function creates unique problems in prescribing a specific parameter in a particular case with respect to what information is relevant or necessary. Also, information may be received which may relate to a case under the investigative jurisdiction of another agency. The maintenance of this information may be necessary to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of other cooperating agencies.

(D) From subsection (e)(2) because collecting information to the fullest extent possible directly from the subject individual may or may not be practical in a criminal and/or civil investigation.

(E) From subsection (e)(3) because supplying an individual with a form containing a Privacy Act Statement would tend to inhibit cooperation by many individuals involved in a criminal and/or civil investigation. The effect would be somewhat adverse to established investigative methods and techniques.

(F) From subsections (e)(4)(G), (H), and (I) because this system of records is exempt from the access provisions of subsection (d).

(G) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the investigative process. It is the nature of law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light.

(H) From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to law enforcement by revealing investigative techniques, procedures, and existence of confidential investigations.

(I) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

(J) From subsection (g) because this system of records should be exempt to the extent that the civil remedies relate to provisions of 5 U.S.C. 552a from which this rule exempts the system.

(iv) *Authority:* (A) Investigative material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identify of a confidential source.

Note: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(B) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

(v) *Reasons:* (A) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(B) From subsections (d) and (f) because providing access to investigative records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

(F) Consistent with the legislative purpose of the Privacy Act of 1974, the AF will grant access to nonexempt material in the records being maintained. Disclosure will be governed by AF's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal or civil violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

* * * * *

b. * * *

(12) [Removed and reserved]

Dated: April 2, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–8475 Filed 4–10–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–01–070]

RIN 2115–AE46

Special Local Regulations for Marine Events; Western Branch, Elizabeth River, Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is adopting permanent special local regulations for marine events held on the waters of the Western Branch of the Elizabeth River, Portsmouth, Virginia. This action is necessary to provide for the safety of life on navigable waters during the events. This action is intended to restrict vessel traffic in portions of the Western Branch of the Elizabeth River during the events.

DATES: This rule is effective May 13, 2002.

ADDRESSES: Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–01–070 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

On January 9, 2002, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Western Branch, Elizabeth River, Portsmouth, Virginia, in the **Federal Register** (67 FR 1177). We received no letters commenting on the proposed rule. No public hearing was requested and none was held.

Background and Purpose

The City of Portsmouth, Ports Events, Inc., and other event organizers sponsor marine events throughout the year on the waters of the Western Branch of the Elizabeth River. These marine events are held adjacent to the Portsmouth City Park. A fleet of spectator vessels traditionally gathers near the event site to view the marine events. To provide for the safety of event participants, spectators and transiting vessels, the Coast Guard will temporarily restrict the movement of all vessels operating in the event area during the marine events.

Discussion of Comments and Changes

No comments were received. Changes were made to the proposed regulatory text, however, to correctly identify the intended effective period. We noticed after publication of the NPRM that the effective dates, as written, may not necessarily fall on consecutive days in certain months. Since the marine events associated with these special local regulations are always held on consecutive days, we are changing the effective dates to reflect consecutive days. These changes do not extend the period of time that the regulations will be in effect.

Regulatory Evaluation

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

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

Small Entities

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

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

This rule will affect the owners or operators of vessels, some of which may be small entities, intending to transit or anchor in the effected portions of the Western Branch of the Elizabeth River during the events.

Although this regulation prevents traffic from transiting a portion of the Western Branch of the Elizabeth River during the events, the effect of this regulation will not be significant because of the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. No assistance was requested by any small business, organization, or governmental jurisdiction.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We prepared an ''Environmental Assessment'' in accordance with Commandant Instruction M16475.1D, and determined that this rule will not significantly affect the quality of the human environment. The ''Environmental Assessment'' and ''Finding of No Significant Impact'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. § 100.525 is added to read as follows:

§ 100.525 Western Branch, Elizabeth River, Portsmouth, Virginia.

(a) *Definitions:*

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

(2) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Group Hampton Roads with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Regulated Area.* The regulated area includes all waters of the Western Branch, Elizabeth River bounded by a line connecting the following points:

Latitude	*Longitude*
36°50′18″ North	076°23′10″ West, to
36°50′18″ North	076°21′42″ West, to
36°50′12″ North	076°21′42″ West, to
36°50′12″ North	076°23′10″ West, to
36°50′18″ North	076°23′10″ West

All coordinates reference Datum NAD 1983.

(b) *Special Local Regulations:*

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

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

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

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

(c) *Effective Dates.* This section is effective annually from 6 a.m. to 6 p.m. on the fourth Friday and following Saturday in March, the fourth Friday and following Saturday in April, the second Friday and following Saturday in May, and the second Saturday and following Sunday in October.

Dated: March 27, 2002.

Thad W. Allen,

Vice Admiral, Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 02–8790 Filed 4–10–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–02–012]

RIN 2115–AE46

Special Local Regulations for Marine Events; Lawson's Creek and Trent River, New Bern, NC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is adopting temporary special local regulations during the Lawson's Creek Hydroplane Race, a marine event to be held on the waters of Lawson's Creek and the Trent River, near New Bern, North Carolina. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of Lawson's Creek and the Trent River during the event.

DATES: This rule is effective from 7 a.m. EDT on May 17, 2002 until 5 p.m. EDT on May 19, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD05–02–012 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

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

regulation. In keeping with 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. The event will begin on Friday, May 17, 2002. There is not sufficient time to publish a NPRM, allow for an appropriate comment period, and publish a final rule prior to the event. Because of the danger posed by high speed racing boats competing within a confined area, special local regulations are necessary to provide for the safety of event participants, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. In addition, advance notifications will be made via the Local Notice to Mariners, marine information broadcasts, and area newspapers.

Background and Purpose

On May 17, 2002, the North South Racing Association will sponsor the Lawson's Creek Hydroplane Race near New Bern, North Carolina. The event will consist of 50 to 75 outboard hydroplanes and runabouts racing in heats at high speed along a 1-mile oval course on the waters of Lawson's Creek and the Trent River. A fleet of spectator vessels is anticipated. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of spectators, participants and transiting vessels.

Discussion of Rule

The Coast Guard is establishing temporary special local regulations on specified waters of Lawson's Creek and the Trent River. The temporary special local regulations will be in effect from 9 a.m. to 5 p.m. EDT on May 17, May 18, and May 19, 2002, and will restrict general navigation in the regulated area during the event. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. The Patrol Commander will allow vessel traffic to transit the regulated area between heats.

Regulatory Evaluation

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

Although this regulation restricts traffic transiting Lawson's Creek and the Trent River during the event, the effect of this regulation will not be significant due to the limited duration of the regulation and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. In addition, the Patrol Commander will allow vessel traffic to transit the regulated area between heats.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit this section of Lawson's Creek and the Trent River during the event.

Although this regulation prevents traffic from transiting Lawson's Creek and the Trent River during the event, the effect of this regulation will not be significant because of its limited duration, and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. In addition, the Patrol Commander will allow vessel traffic to transit the regulated area between heats.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination

with Indian Tribal Governments, because it does not have a substantial and direct effect on one or more Indian tribes, on the relationship between the Federal Governments and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraphs (34)(h) and (35)(a) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit for an event not located in, proximate to, or above an area designated as environmentally sensitive by an environmental agency of the Federal, state, or local government, are specifically excluded from further analysis and documentation under those sections. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Add a temporary section, § 100.35T–05–012 to read as follows:

§ 100.35T–05–012, Lawson's Creek and Trent River, New Bern, NC.

(a) *Definitions:*

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

(2) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Group Fort Macon with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant.* Includes all vessels participating in the Lawson's Creek Hydroplane Race under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Group Fort Macon.

(4) *Regulated Area.* Includes all waters of Lawson's Creek and the Trent River, shoreline to shoreline, bounded to the east by the Route 17–B bridge and bounded to the southwest by the Route 70 bridge.

(b) *Special Local Regulations:*

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

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

(i) Stop the vessel immediately when directed to do so by any official patrol.

(ii) Proceed as directed by any official patrol.

(iii) Unless otherwise directed by the official patrol, operate at a minimum wake speed not to exceed six (6) knots.

(c) *Effective Dates:* This section is in effect from 7 a.m. to 5 p.m. EDT on May 17, May 18, and May 19, 2002.

Dated: April 2, 2002.

Thad W. Allen,

Vice Admiral, Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 02–8788 Filed 4–10–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–123; KY–123–1; KY 137–200218(a); FRL–7169–7]

Approval and Promulgation of Implementation Plans: Kentucky: Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) revision that was submitted by the Commonwealth of Kentucky (Kentucky) on January 31, 2002. This revision responds to EPA's regulation entitled, ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' otherwise known as the ''NO_X SIP Call.'' This revision establishes and requires nitrogen oxides (NO_X) reduction requirements and an allowance trading program for large electric generating and industrial units, beginning in 2004. It also establishes and requires NO_X reduction requirements for cement kilns beginning in 2004. The revision includes a budget demonstration and initial source allocations that clearly demonstrate that Kentucky will achieve the required NO_X emission reductions in accordance with the timelines set forth in EPA's NO_X SIP Call. The intended effect of this SIP revision is to reduce emissions of NO_X in order to help attain the national ambient air quality standard for ozone. EPA is approving Kentucky's NO_X Reduction and Trading Program because it meets the requirements of the Phase I NO_X SIP Call that will significantly reduce ozone transport in the eastern United States. As of May 31, 2004, Kentucky's plan will also provide reductions at units currently required to make reductions under the EPA's Clean Air Act (CAA) Section 126 rulemaking. EPA is approving this plan as a SIP revision fulfilling the NO_X SIP Call ''Phase I'' requirements. On December 26, 2000, EPA determined that Commonwealth of Kentucky had failed to submit a SIP in response to the NO_X SIP Call, thus starting a 18 month clock for the mandatory imposition of sanctions and the obligation for EPA to promulgate a Federal Implementation Plan (FIP) within 24 months. On January 31, 2002, Kentucky submitted a NO_X SIP and EPA found that SIP submission complete on March 6, 2002, stopping the sanctions clock. Through this **Federal Register** Notice, both the sanctions clock and EPA's FIP obligation are terminated.

EPA is also approving several revisions to existing regulation 401 KAR 51:001 (Definitions for 401 KAR Chapter 51) that do not to address NO_X SIP Call requirements, but fulfill other Kentucky statutory requirements.

DATES: This direct final rule is effective June 10, 2002 without further notice, unless EPA receives adverse comment by May 13, 2002. If adverse comment is

received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Sean Lakeman; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW; Atlanta, Georgia 30303–8960. Copies of Kentucky's submittals and other information relevant to this action are available for inspection during normal business hours at the following addresses: Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601–1403.

The interested persons wanting to examine these documents should make an appointment at least 24 hours before the visiting day and reference files KY–123, KY–123–1 and KY–137.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW; Atlanta, Georgia 30303–8960. Mr. Lakeman can also be reached by phone at (404) 562–9043 or by electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION: On February 20, 2001, Kentucky's Natural Resources and Environmental Protection Cabinet (Cabinet) submitted draft regulations in response to the federal NO_X SIP Call to EPA for pre-adoption review, and requested parallel processing to the development and adoption of these regulations by Kentucky, since the rules were not adopted or state-effective at the time of submittal. On October 10, 2001, the Cabinet supplemented the February 20, 2001 submittal with a draft budget demonstration and initial source allocation for pre-adoption review. Parallel processing of this documentation to support Kentucky's NO_X SIP Call regulations was also requested, as it was not adopted by the Cabinet at the time of submittal. The supplemental submittal also contained copies of Kentucky's final NO_X SIP Call regulations, including evidence that these regulations were adopted by Kentucky and became effective on August 15, 2001. However, the regulations were not formally submitted for approval into the Kentucky SIP. On January 31, 2002, Kentucky submitted final revisions to its SIP to meet the requirements of the Phase I NO_X SIP Call. The revisions comply with the requirements of the Phase I NO_X SIP Call. Included in the document are revisions to 401 KAR 51:001 ''Definitions for 401 KAR Chapter 51'', 401 KAR 51:160 ''NO_X Requirements for Large Utility and Industrial Boilers'', 401 KAR 51:170 ''NO_X Requirements for Cement Kilns'', 401 KAR 51:180 NO_X Credits for Early Reduction and Emergency'', 401 KAR 51:190 Banking and Trading NO_X Allowances'', and 401 KAR 51:195 NO_X opt-in Provisions''. EPA has deemed the submittal is administratively and technically complete, and a letter of completeness was sent to the Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet on March 6, 2002. The information in this notice is organized as follows:

I. EPA's Action
A. What actions are being approved today?
B. Why is EPA approving these actions?
C. What are the NO_X SIP Call general requirements?
D. What is EPA's NO_X budget and allowance trading program?
E. What guidance did EPA use to evaluate Kentucky's submittal?
F. What is the result of EPA's evaluation of Kentucky's program?
II. Kentucky's Control of NO_X Emissions
A. When did Kentucky submit the SIP revision to EPA in response to the NO_X SIP Call?
B. What is the Kentucky NO_X Budget Trading Program?
C. What is the Compliance Supplement Pool?
D. What is the New Source Set-Aside program?
E. Today's Rulemaking and Section 126 Rulemaking
III. What other revisions to the Kentucky SIP is EPA approving?
IV. Final Action
V. Administrative Requirements

I. EPA's Action

A. What Actions Are Being Approved Today?

EPA is approving revisions to Kentucky's SIP concerning the adoption of its NO_X Reduction and Trading Program and cement kiln rule, submitted on January 31, 2002. EPA is also approving several revisions to existing regulation 401 KAR 51:001 (Definitions for 401 KAR Chapter 51) that do not to address NO_X SIP Call requirements, but fulfill other Kentucky statutory requirements.

B. Why Is EPA Approving These Actions?

EPA is approving these actions because Kentucky's NO_X Reduction and Trading Program and cement kiln regulations meet the requirements of the Phase I NO_X SIP Call. Therefore, EPA is approving Kentucky's NO_X Reduction and Trading Program.

To address all NO_X SIP Call requirements Kentucky revised existing regulation 401 KAR 51:001 (Definitions for 401 KAR Chapter 51) and added several new regulations to 401 KAR 51. Under Kentucky statute, any regulation that is reopened for revision must be completely updated at the time of reopening. Since 401 KAR 51 also contains regulations that address new source review requirements for attainment and nonattainment areas, an update of 401 KAR 51:001 required revision of several definitions associated with these regulatory programs. Several other revisions were made to improve the overall clarity and readability of this regulation.

C. What Are the NO_X SIP Call General Requirements?

The NO_X SIP Call requires 22 States and the District of Columbia to meet statewide NO_X emission budgets during the five month period from May 1 to September 30, called the ozone season (or control period), in order to reduce the amount of ground level ozone that is transported across the eastern United States. The D.C. Circuit decision on March 3, 2000, concerning the NO_X SIP Call (*Michigan* v. *EPA*, 213 F.3d 663 (D.C. Cir. 2000)) reduced the number of States from 22 to 19 and defined the ozone season in 2004 as May 31 through September 30.

EPA identified NO_X emission reductions by source category that could be achieved by using cost-effective controls. The source categories included were electric generating units (EGUs) and non-electric generating units (non-EGUs), internal combustion engines, and cement kilns. EPA determined statewide NO_X emission budgets based on the implementation of these cost effective controls for each affected jurisdiction to be met by the year 2007. Internal combustion engines are not addressed by Kentucky in this response to Phase I, but will be in Phase II. In the NO_X SIP Call, EPA suggested that imposing statewide NO_X emissions caps on large fossil-fuel fired industrial boilers and EGUs would provide a highly cost effective means for states to meet their NO_X budgets. In fact, the state-specific budgets were set assuming an emission rate of 0.15 lbs NO_X/mmBtu at EGUs, multiplied by the projected heat input (mmBtu/hr). The NO_X SIP Call state budgets also assumed on average a 30 percent NO_X reduction from cement kilns, and a 60 percent reduction from industrial boilers. The

non-EGU control assumptions were applied at units where the heat input capacities were greater than 250 mmBtu per hour, or in cases where heat input data were not available or appropriate, at units with actual emissions greater than one ton per day. However, the NO_X SIP Call allowed states the flexibility to decide which source categories to regulate in order to meet the statewide budgets.

To assist the states in their efforts to meet the SIP Call, the NO_X SIP Call final rule included a model NO_X allowance trading regulation, called ''NO_X Budget Trading Program for State Implementation Plans'' (40 CFR part 96) that could be used by states to develop their regulations. The NO_X SIP Call rule explained that if states developed an allowance trading regulation consistent with the EPA model rule, they could participate in a regional allowance trading program that would be administered by the EPA (63 FR 57458–57459, October 27, 1998)).

There were several periods during which EPA received comments on various aspects of the NO_X SIP Call emissions inventories. On March 2, 2000 (65 FR 11222), EPA published additional technical amendments to the NO_X SIP Call. On March 3, 2000, the D.C. Circuit issued a decision on the NO_X SIP Call that largely upheld EPA's position (*Michigan* v. *EPA*, 213 F.3d 663 (D.C. Cir. 2000)). The DC Circuit Court denied petitioners' requests for rehearing or rehearing en banc on July 22, 2000. However, the Circuit Court remanded four specific elements to EPA for further action: the definition of electric generating unit, the level of control for stationary internal combustion engines, the geographic extent of the NO_X SIP Call for Georgia and Missouri, and the inclusion of Wisconsin. On March 5, 2001, the U.S. Supreme Court declined to hear an appeal by various utilities, industry groups, and a number of upwind states from the D.C. Circuit's ruling on EPA's NO_X SIP Call rule.

EPA published a proposal that addresses the remanded portion of the NO_X SIP Call on February 22, 2002 (67 FR 8395). Any additional emissions reductions required as a result of a final rulemaking on that proposal will be reflected in the second phase portion (Phase II) of the Commonwealth's emission budget. On April 11, 2000, in response to the Court's decision, EPA notified Kentucky of the maximum amount of NO_X emissions allowed for the Commonwealth during the ozone season. This budget adjusted Kentucky's NO_X emission budget to reflect the Court's decision regarding internal combustion engines and cogeneration facilities. Although the Court did not order EPA to modify Kentucky's budget, EPA believes these adjustments are consistent with the Court's decision.

D. What Is EPA's NO_X Budget and Allowance Trading Program?

EPA's model NO_X budget and allowance trading rule, 40 CFR part 96, sets forth a NO_X emissions trading program for large EGUs and non-EGUs. A state can voluntarily choose to adopt EPA's model rule in order to allow sources within its borders to participate in regional allowance trading. The NO_X SIP Call (63 FR 57514–57538, October 27, 1998) and 40 CFR part 96 contain a full description of EPA's model NO_X budget trading program.

Emissions trading, in general, uses market forces to reduce the overall cost of compliance for pollution sources, such as power plants, while maintaining emission reductions and environmental benefits. One type of market-based program is an emissions budget and allowance trading program, commonly referred to as a ''cap and trade'' program.

In a cap and trade program, the state (or EPA) sets a regulatory limit, or emissions budget, in mass emissions (emissions budget) from a specific group of sources. The budget limits the total number of allowances for each source covered by the program during a particular control period. When the budget is set at a level lower than the current emissions, the effect is to reduce the total amount of emissions during the control period. After setting the budget, the state (or EPA) then assigns, or allocates, allowances to the participating entities up to the level of the budget. Each allowance authorizes the emission of a quantity of pollutant, e.g., one ton of airborne NO_X.

At the end of the control period, each source must demonstrate that its actual emissions during the control period were less than or equal to the number of available allowances it holds. Sources that reduce their emissions below their allocated allowance level may sell their extra allowances. Sources that emit more than the amount of their allocated allowance level may buy allowances from the sources with extra reductions. In this way, the budget is met in the most cost-effective manner.

E. What Guidance Did EPA Use To Evaluate Kentucky's Submittal?

The NO_X SIP Call included a model NO_X budget trading program regulation (see 40 CFR part 96). EPA used the model rule and 40 CFR 51.121–51.122 to evaluate Kentucky's NO_X reduction and trading program and 40 CFR part 98 subpart B (proposed model rule for cement kilns) to evaluate Kentucky's cement kiln rule SIP submittal.

F. What Is the Result of EPA's Evaluation of Kentucky's Program?

EPA has evaluated Kentucky's January 31, 2002, SIP submittal and finds it approvable. The Kentucky NO_X reduction and trading program and cement kiln rule are consistent with EPA's guidance and meet the requirements of the Phase I NO_X SIP Call. EPA finds the NO_X control measures in Kentucky's NO_X reduction and trading program approvable. Also, EPA finds that the submittal contained the information necessary to demonstrate that Kentucky has the legal authority to implement and enforce the control measures, and to demonstrate their appropriate distribution of the compliance supplement pool. Furthermore, EPA finds that the submittal demonstrates that the compliance dates and schedules, and the monitoring, recordkeeping and emission reporting requirements will be met.

II. Kentucky's Control of NO_X Emissions.

A. When Did Kentucky Submit the SIP Revision to EPA in Response to the NO_X SIP Call?

On February 20, 2001, the Cabinet submitted a draft NO_X emission control rule to the EPA for pre-adoption review, requesting parallel processing to the development of the rule at the Commonwealth level. On October 10, 2001, the Cabinet supplemented the February 20, 2001, submittal with a draft budget demonstration and initial source allocation for pre-adoption review, and requested parallel processing of this supplement. On January 31, 2002, Kentucky submitted a final revision to its SIP to meet the requirements of the Phase I NO_X SIP Call.

B. What Is Kentucky's NO_X Budget Trading Program?

Kentucky proposes, as in the model rule, to allow the large EGUs, boilers and turbines to participate in the multi-state cap and trade program. Cement kilns are not included in the trading program, but will be required to install low NO_X burners, mid-kiln firing systems or technology that achieves the same emission reductions, which achieve overall 30 percent reduction from sources in this category. Kentucky's SIP revision to meet the requirements of the NO_X SIP Call

consists of revised rule 401 KAR 51:001 Definitions for 401 KAR Chapter 51; and new rules 401 KAR 51:160 NO_X requirements for large utility and industrial boilers, 401 KAR 51:170 NO_X requirements for cement kilns, 401 KAR 51:180 NO_X credits for early reduction and emergency, 401 KAR 51:190 Banking and Trading NO_X allowances, and 401 KAR 51:195 NO_X opt-in provisions.

All of the above-cited regulations, with the exception of 401 KAR 51:170 NO_X requirements for cement kilns, contain elements of Kentucky's NO_X Budget Trading Program. These regulations establish and require a NO_X cap and allowance trading program for large EGUs and non-EGUs, for the ozone control seasons beginning May 31, 2004, and commencing May 1 in years thereafter.

Kentucky voluntarily chose to follow EPA's model NO_X budget and allowance trading rule, 40 CFR part 96, that sets forth a NO_X emissions trading program for large EGUs and non-EGUs. Since Kentucky's NO_X Budget Trading Program is based upon EPA's model rule, Kentucky sources are allowed to participate in the interstate NO_X allowance trading program that EPA will administer for the participating states.

Kentucky has adopted regulations that are substantively identical to 40 CFR part 96, with the exception of some provisions related to sources procuring and using early reduction credits (ERCs) (see 401 KAR 51:180 NO_X credits for early reduction and emergency). Kentucky's rule allows ERCs to be earned for reductions in NO_X emissions during the 2001, 2002, and 2003 control periods that may be deducted for compliance with NO_X emission standards only during the 2004 and 2005 control periods. ERCs will be granted for each ton of NO_X emission reduction achieved below 0.45 pounds per million British thermal units (lbs/MMBTU) or the average NO_X emission rate (in lbs/MMBTU) from the baseline control period in 2000, whichever is less. ERCs will not be earned for emission reductions made to satisfy requirements under the CAA. Under 401 KAR 51:160, Kentucky allocates NO_X allowances to the EGU and non-EGU units that are affected by these requirements. The NO_X trading program applies to all fossil fuel-fired EGUs with a nameplate capacity equal to or greater than 25 MW that sell any amount of electricity to the grid as well as any non-EGUs that have a heat input capacity equal to or greater than 250 mmBtu per hour. Each NO_X allowance permits a source to emit one ton of NO_X during the ozone season. NO_X allowances may be bought or sold. Unused NO_X allowances may also be banked for future use, with certain limitations. Kentucky's NO_X allocations do not exceed the values allowed to meet the Commonwealth cap. Therefore, pursuant to 40 CFR 51.121(p)(1), EPA is proposing approval of Kentucky's SIP revision as satisfying the Commonwealth's NO_X emission reduction obligations.

It should be noted that 401 KAR 51:160 section 2(1)(a)6 defines how Kentucky intends to account for the exempt units, as provided in Kentucky's January 4, 2002, response to EPA. These units are only exempt from the requirements of 401 KAR 51:160, Sections 3 through 8. These units remain NO_X budget units, as provided in 401 KAR 51:160, Section 1 and Section 2(1). As such, they remain subject to 401 KAR 51:190, which incorporates by reference the federal trading program; and thus provides that all NO_X budget units must have an authorized account representative and establish appropriate accounts. Section 2(1)(a)6a clearly states that the units must, among other things, ''secure and transfer to an account designated by EPA, NO_X allowances for each control period in an amount equal to the NO_X emission limitation * * * upon which the unit's exemption is based.'' This is Kentucky's method for accounting for these units in the Commonwealth budget. Kentucky has agreed that this language should be more clearly written and intends to clarify this language during the next amendment to the regulation.

Source owners will monitor their NO_X emissions by using systems that meet the requirements of 40 CFR part 75, subpart H, and report resulting data to EPA electronically. Each budget source complies with the program by demonstrating at the end of each control period that actual emissions do not exceed the amount of allowances held for that period. However, regardless of the number of allowances a source holds, it cannot emit at levels that would violate other federal or Commonwealth limits, for example, reasonably available control technology (RACT), new source performance standards, or Title IV (the Federal Acid Rain program).

In 401 KAR 51:160, Section 2(1)(a)6, Kentucky used the term ''owner or operator'' incorrectly. However, the federal trading program, which is incorporated by reference in 401 KAR 51:190, provides that all NO_X budget units must have an authorized account representative and establish appropriate accounts. Therefore there is no real impact on implementation of the program. Kentucky has committed to propose language to revise the appropriate terms when the regulations are next amended.

401 KAR 51:160 NO_X Requirements for large utility and industrial boilers, addresses several aspects of Kentucky's NO_X Budget Trading Program for individual subject units (EGUs, boilers or turbines used in power plants and other industrial applications). Sections 1 and 2 establish applicability requirements and requirements for unit exemptions based on permit limitations and retired unit status, consistent with part 96 Subpart A—NO_X Budget Trading Program General Provisions. Section 2(1)(b) states that an exempted unit that does not comply with its permit limitations shall lose its exempt status and shall become subject to all provisions of 401 KAR 51:160. It is Kentucky's intent that a unit, which loses its exemption by not complying with the applicable permit limits, shall become subject retroactively to the full requirements of the NO_X SIP Call. Kentucky has committed to propose further clarifying language when the regulation is next amended. Sections 3 and 7 require subject units to monitor and report NO_X emissions in accordance with 40 CFR part 96 Subpart H—Monitoring and Reporting, and meet the compliance requirements specified in 401 KAR 51:190. Sections 4 and 5 establish methodologies and procedures for allocating NO_X allowances, including the establishment of a three-year allocation period, that are consistent with part 96 Subpart E—NO_X Allowance Allocations. Section 6 establishes requirements for applying for a NO_X budget permit that are consistent with part 96 Subpart C—Permit Requirements.

401 KAR 51:190 Banking and trading of NO_X allowances, incorporates by reference several portions of 40 CFR part 96 in their entirety: Subpart B—Authorized Representative for NO_X Budget Sources (40 CFR parts 96.10–96.14) , Subpart D—Compliance Certification (40 CFR parts 96.30–96.31), and Subpart G—NO_X Allowance Transfers (40 CFR parts 96.60–96.62). 401 KAR 51:190 also incorporates by reference all of 40 CFR part 96 Subpart F—NO_X Allowance Tracking System (40 CFR parts 96.50–96.57), with the exception of 40 CFR part 96.55(c) (provisions for requesting and allocating early reduction credits (ERCs)). 401 KAR 51:180 NO_X credits for early reduction and emergency, addresses the requirements of 40 CFR part 96.55(c), as described in Section IIC. of this final

rulemaking. 401 KAR 51:195 NO_X opt-in provisions, incorporates by reference 40 CFR part 96 Subpart I—Individual Unit Opt-ins. It should be noted that in 401 KAR 51:001 section 1(2) the definition ''Affected Facility'' (as applied to the opt-in program) appears to broaden the regulation, however, in 401 KAR 51:195 section 2 the definition is narrowed and is consistent with the NO_X SIP Call.

401 KAR 51:170 NO_X requirements for cement kilns, establishes requirements for cement manufacturing facilities. These sources are subject to NO_X reduction requirements but do not participate in the NO_X trading program. They are required to install low NO_X burners, mid-kiln firing systems or technology that achieves the same emission reductions. The NO_X SIP Call state budgets assumed on average a 30 percent NO_X reduction from cement kilns. Kentucky has one existing cement kiln. Kentucky's regulation establishes an emissions limit of 6.6 pounds NO_X per ton of clinker averaged over a 30 day rolling period. This emission limit, which the facility will meet to address NO_X RACT requirements, reduces NO_X emissions from this facility by more than 30 percent from projected 2007 baseline emissions. The cement kiln rule is consistent with EPA's guidance and meets the requirements of the Phase I NO_X SIP Call. Kentucky's submittal does not rely on any additional reductions beyond the anticipated federal measures in the mobile and area source categories.

Kentucky's budget demonstration shows how Kentucky intends to meet the Phase I NO_X emission budgets established by EPA. Kentucky's 2007 NO_X budget emissions for area, non-road and highway sources are identical to EPA's 2007 budget emissions for these source categories, as identified in the March 2, 2000, final rule (65 FR 11231). Kentucky's 2007 NO_X budget emissions for EGUs and non-EGUs revise EPA's 2007 budget emissions for these two source categories. Kentucky's submittal provides documentation demonstrating that EPA's 2007 budget emissions incorrectly omitted one EGU unit, misidentified one non-EGU unit as small (not subject to control), misidentified several non-EGU units as large (subject to control) and added non-EGU large internal combustion engines (3,083 tons) which are not part of the trading program. EPA has reviewed Kentucky's corrections and concurs with Kentucky's revised list of EGUs, large non-EGUs and small non-EGUs, as well as Kentucky's resultant 2007 NO_X budget emissions for the EGU and non-EGU source categories. EPA therefore is approving Kentucky's final NO_X emission budgets to meet Phase I of the NO_X SIP Call as shown below:

Source category	EPA 2007 NO_X budget emissions (tons/season)	Kentucky 2007 NO_X budget emissions (tons/season)
EGUs	36,503	36,504
Non-EGUs	25,669	28,750
Area Sources	31,807	31,807
Non-road Sources	15,025	15,025
Highway Sources	53,268	53,268
Total	162,272	165,354

C. What Is the Compliance Supplement Pool?

To provide additional flexibility for complying with emission control requirements associated with the NO_X SIP Call, the final NO_X SIP Call rule provided each affected state with a ''compliance supplement pool.'' The compliance supplement pool is a quantity of NO_X allowances that may be used to cover excess emissions from sources that are unable to meet control requirements during the 2004 and 2005 ozone season. Allowances from the compliance supplement pool will not be valid for compliance past the 2005 ozone season. The NO_X SIP Call included these voluntary provisions in order to address commenters' concerns about the possible adverse effect that the control requirements might have on the reliability of the electricity supply or on other industries required to install controls as the result of a state's response to the NO_X SIP Call.

A state may issue some or all of the compliance supplement pool via two mechanisms. First, a state may issue some or all of the pool to sources with credits from implementing NO_X reductions in an ozone season beyond any applicable requirements of the CAA after September 30, 1999, and before May 31, 2004, (i.e., early reductions credits, or ERCs). This allows sources that cannot install controls prior to May 31, 2004, to purchase other sources' ERCs in order to comply. Second, a state may issue some or all of the pool to sources that demonstrate a need for an extension of the May 31, 2004, compliance deadline due to undue risk to the electricity supply or other industrial sectors, and where early reductions are not available. See 40 CFR 51.121(e)(3).

Kentucky's rule, 401 KAR 51:180 NO_X credits for early reduction and emergency, establishes requirements for monitoring, calculating, allocating and tracking ERCs that are generally consistent with the general requirements of 40 CFR part 96.55(c). 401 KAR 51:180 also establishes alternative requirements for Kentucky's sources to follow in procuring and using ERCs. First, Kentucky allows an ERC to be granted ''for each ton of NO_X emission reduction achieved below 0.45 lbs NO_X/mmBtu [the federally-required limit for most units under Title IV of the CAA] or the average NO_X emission rate (in lbs/mmBtu) from the baseline control period in 2000, whichever is less.'' In contrast, 40 CFR part 96.55(c) allows the owner or operator to request ERCs for a NO_X budget unit only if its NO_X emission rate is reduced to less than both 0.25 lbs NO_X/ mmBtu and 80 percent of the unit's NO_X emission rate in the 2000 control period for EGUs, and for non-EGUs, to less than 95 percent of the unit's NO_X emission rate in the 2000, 2001, or 2002 control period. However, Kentucky's rule is acceptable within the flexibility allowed by the model rule. Kentucky's regulation also divides the compliance supplement pool into separate pools for EGUs and non-EGUs. It further divides the pool for EGUs into separate annual allocations, with 20 percent of the pool to be allocated for NO_X reductions achieved in 2001, 30 percent of the pool to be allocated for NO_X reductions achieved in 2002, and 50 percent of the pool to be allocated for NO_X reductions achieved in 2003.

D. What Is the New Source Set-Aside Program?

Kentucky's SIP provides for new source set-asides. The new source set

aside comprises a set percent of the EGU and non-EGU budgets taken off the top and reserved for new units. The allocation period that begins in 2004 for EGUs that commence commercial operation after May 1, 2001, and before May 1, 2006, is 5 percent of the tons of NO_X emissions in the Commonwealth trading program budget apportioned to EGUs under section 96.40. For allocation periods beginning in 2007 or later, the allocation for new EGU units is 2 percent of the tons of NO_X emissions in the Commonwealth trading program budget apportioned to EGUs under 96.40 for the given allocation period. For non-EGUs, for all allocation periods, the allocation for new units is 2 percent of the NO_X allowances in the Commonwealth trading budget apportioned to non-EGUs under 96.40 for the given allocation period. This approach to allocations for new units is acceptable because it falls within the flexibility of the NO_X SIP Call requirements for a state's allocation to new sources.

E. Today's Rulemaking and Section 126 Rulemaking

Today's direct final rulemaking does not have any direct bearing on the applicability of the Section 126 rulemaking. We are not amending the Section 126 rule at this time. However, based upon coordination with EPA, Kentucky made changes to its NO_X SIP rule so that the rule could potentially supplant the Section 126 rule as of May 31, 2004. In order to make a transition of this sort, EPA would need to complete a future rulemaking to amend the Section 126 rule. It is EPA's intention to propose and finalize rulemaking to supplant the Section 126 requirements in Kentucky prior to May 31, 2004.

III. What Other Revisions to the Kentucky SIP Is EPA Proposing To Approve?

To address all NO_X SIP Call requirements Kentucky revised existing regulation 401 KAR 51:001 (Definitions for 401 KAR Chapter 51). Under Kentucky statute, any regulation that is reopened for revision must be completely updated at the time of reopening. Since 401 KAR 51 also contains regulations that address new source review requirements for attainment and nonattainment areas, complete update of 401 KAR 51:001 required revision of some definitions associated with these regulatory programs. Several other text changes were made to improve the overall readability and clarity of this regulation. This submittal adds definitions to 401 KAR 51:001 for the following terms that do not address NO_X SIP Call requirements: Acid Rain emissions limitation and Enforceable as a practical matter. This submittal also revises existing definitions contained in 401 KAR 51:001 for the following terms that do not address NO_X SIP Call requirements: Alternative Method, Capital expenditure, Extreme nonattainment county or Extreme nonattainment area, Malfunction, Marginal nonattainment county or Marginal nonattainment area, Moderate nonattainment county or Moderate nonattainment area, Modification, New Source, PM10, Potential to emit or PTE, Reconstruction, Reference method, Run, Secondary emissions, Serious nonattainment county or Serious nonattainment area, Severe nonattainment county or Severe nonattainment area, Source, Standard, Total suspended particulates or TSP and Volatile organic compound or VOC.

IV. Final Action

EPA is approving the Kentucky's SIP revision consisting of its NO_X Reduction and Trading Program and cement kiln rule, which was submitted on January 31, 2002. EPA finds that Kentucky's submittal will be fully approvable because it meets the requirements of the Phase I NO_X SIP Call.

EPA is also approving several revisions to existing regulation 401 KAR 51:001 (Definitions for 401 KAR Chapter 51) that do not to address NO_X SIP Call requirements, but fulfill other Kentucky statutory requirements.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective June 10, 2002 without further notice unless the Agency receives adverse comments by May 13, 2002.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 10, 2002 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Administrative Requirements

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

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

because it is not economically significant.

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 10, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: April 1, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart S—Kentucky

2. In § 52.920 the table in pagagraph (c) is amended by revising entry ''401 KAR 51:001'' and adding 5 new entries ''51:160,'' ''51:170,'' ''51:180,'' ''51:190,'' and ''51:195'' in numerical order at the end of Chapter No. 51 New Source Requirements; Non-Attainment Areas to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) EPA-approved regulations.

EPA-APPROVED KENTUCKY REGULATIONS FOR KENTUCKY

Reg	Title/subject	State effective date	EPA approval date	Federal Register Notice
* *	*	*	*	* *
Chapter 51 New Source Requirements; Non-Attainment Areas				
401 KAR 51:001	Definitions	08/15/01	April 11, 2002	[Insert Federal Register cite for this publication].
* *	*	*	*	* *
401 KAR 51:160	NO_X Requirements for Large Utility and Industrial Boilers.	08/15/01	April 11, 2002	[Insert Federal Register cite for this publication].
401 KAR 51:170	NO_X Requirements for Cement Kilns.	08/15/01	April 11, 2002	[Insert Federal Register cite for this publication].
401 KAR 51:180	NO_X Credit for Early Reduction and Emergency.	08/15/01	April 11, 2002	[Insert Federal Register cite for this publication].
401 KAR 51:190	Banking and Trading Allowances.	08/15/01	April 11, 2002	[Insert Federal Register cite for this publication].
401 KAR 51:195	NO_X Opt-in Provisions	08/15/01	April 11, 2002	[Insert Federal Register cite for this publication].
* *	*	*	*	* *

[FR Doc. 02–8683 Filed 4–10–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301212; FRL–6821–4]

RIN 2070–AB78

Lysophosphatidylethanolamine (LPE); Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the biological pesticide lysophosphatidylethanolamine (LPE) on all food commodities when applied/used in accordance with good agricultural practices. Nutra-Park, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996, requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of LPE.

DATES: This regulation is effective April 11, 2002. Objections and requests for hearings, identified by docket control number OPP–301212, must be received by EPA, on or before June 10, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit IX. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301212 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Carol E. Frazer, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8810; and e-mail address: frazer.carol@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,'' ''Regulations and Proposed Rules,'' 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/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301212. The official record consists of the documents specifically referenced in this action, 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 Hwy., 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.

II. Background and Statutory Findings

In the **Federal Register** of January 3, 2002 (67 FR 323) (FRL–6773–6), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) announcing the filing of a pesticide tolerance petition (PP 1F6244) by JP BioRegulators, now called Nutra-Park Inc., 8383 Greenway Blvd., Suite 520, Middleton, WI 53562. This notice included a summary of the petition prepared by the petitioner Nutra-Park, Inc. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.1199 be amended by establishing a permanent exemption from the requirement of a tolerance for residues of lysophosphatidylethanolamine (LPE).

III. Risk Assessment

New section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(c)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Additionally, section

408(b)(2)(D) requires that the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.

EEPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

LPE is a phospholipid. Phospholipids are a heterogeneous group of compounds that are classed together partly because of their solubility, and partly on the basis of the ester phosphorus present in the compounds. Phospholipids are found in all cellular organisms as part of the structure of the cellular membrane.

The framework of membranes surrounding the cell and intracellular organelles is composed of a bilayer of lipid. The basic unit of the bilayer is a composite of phospholipids (phosphatidylcholine, sphingomyelin, phosphatidylethanolamine, phosphatidylserine, phosphatidylinositol). LPE is derived from phosphatidylethanolamine by the enzymatic removal of one fatty acid by a phospholipase. Residues of LPE naturally occur in raw agricultural commodities and are eaten regularly. For example, LPE and *N*-acyl LPE levels are found in the following foodstuffs: 13-15 mg/100 g in corn grain, 0.5-29 mg/100 g in rice and 15-64 mg/100 g in wheat grain; and 2.1% lipid phosphorus in egg yolk. LPE plus lysophosphatidylcholine (LPC) in cow milk was 7.6% w/w and it is found in human breast milk (Ref. 1). Residues of LPE will not be significantly increased in raw agricultural commodities through the use of this product. For example, using reasonably foreseeable residue levels based on application rates, the level of LPE applied to apples would be approximately 0.06% greater than that found naturally in apple pulp (Ref. 2).

Toxicity studies submitted in support of this tolerance exemption are referenced below. More detailed analyses of these studies can be found in the specific Agency reviews of the studies (Refs. 3 and 4). In addition, a substantial body of information on LPE is published and selected copies are included in this reference (Ref. 5).

Two toxicity studies using the same protocol were submitted for each category captioned below one for the technical (LPE E94T) and one for the end-use product (LPE-94 10% Aqueous Growth Regulator). The results of study reviews are combined in the summaries that follow. LPE E94T is covered first. Next, a reduced concentration, 35% LPE, is shown as representative test material for the end-use product, although it is not as reduced as the pending end-use product concentration (10%).

1. *Acute oral toxicity (OPPTS 870.1100; 152–10; MRIDs 452740–01 and 452736–01).* Five male and five female rats were dosed with 5,000 milligrams/kilograms (mg/kg) of LPE E94T or 35% LPE and observed for 14 days. All rats survived and gained weight throughout each study. LPE E94T caused two females to exhibit liquid feces and oily urogenital areas on the day of dosing (symptoms cleared by day 1 post dosing), but the end-use product showed no abnormal symptoms. All rats appeared normal during the study. Based on the data, the acute oral LD_{50} for rats was >5,000 mg/kg. Classification: Acceptable; Toxicity Category IV.

2. *Acute dermal toxicity (OPPTS 870.1200; 152–11; MRIDs 452740–02 and 454361–01).* Five male and five female rabbits were given 2,000 mg/kg LPE E94T or 35% LPE dermally for 24 hours and observed for the following 14 days. All rabbits survived and gained weight throughout the study. LPE E94T caused erythema, edema, atonia, fissuring, and/or desquamation on some rabbits during the study, but all symptoms cleared by day 14. Some of the 35% LPE rabbits also exhibited very slight to well-defined erythema and/or desquamation symptoms that cleared by day 14. One female had very slight erythema by day 7 through day 10 and desquamation by day 7 through the end of the study. The acute dermal LD_{50} for rabbits was >2,000 mg/kg. Classification: Acceptable; Toxicity Category III.

3. *Acute inhalation toxicity (OPPTS 870.1300; 152–12; MRIDs 452740–05 and 452736–04).* In the first study, five male and five female rats were exposed for four hours to nominal atmospheric concentrations of 91.21 mg/L LPE E94T and observed for 14 days. In the second study, the same number and mix of animals were exposed to atmospheric concentrations of 35% LPE for 4 hours and observed for 14 days. All rats survived the study. After an initial post-exposure weight loss, all rats gained weight through the remainder of the study. All rats had wet stained fur and two males and one female had red/brown staining around the nose on day 1 in the LPE E94T study, while two males and one female had staining around the eyes on the day of exposure to the 35% LPE, but symptoms cleared by day 2 in both studies. One male in the 35% LPE study had a sore on his neck on days 2-7 and days 13-15. Gross necropsies in the LPE E94T study indicated that the lungs were unaffected, but certain other abnormalities were noted in some rats. The abnormalities were not likely the result of exposure to the test substance, and are commonly noted in lab animals. No abnormalities occurred in the 35% LPE study. The inhalation LC_{50}'s for rats was >2.50 milligram/liter (mg/L) for the LPE E94T and >4.63 for the 35% LPE. Classification; Acceptable; Toxicity Category IV.

4. *Primary eye irritation (OPPTS 870.2400; 152–13; MRIDs 452740–04 and 452736–03).* In the first study, three adult rabbits administered 29 mg LPE E94T mixed in 0.1 mL water into the everted right eyelid, then observed for 72 hours. No corneal opacity was noted on any rabbit. All rabbits in the group had iritis and conjunctivitis one hour after instillation of LPE; all symptoms cleared by 48-hours post-instillation. In the second study, three adult rabbits administered 0.1 mL of undiluted test substance 35% LPE into the everted right eyelid, then observed for 72 hours. No corneal opacity was noted on any rabbit. One rabbit exhibited very mild conjunctivitis at 1–hour post-instillation, but symptoms cleared by 24 hours. Based on the data, LPE E94T was considered a minimal irritant. Classification: Acceptable; Toxicity Category III. Based on the data for 35% LPE, this compound was practically non-irritating. Classification: Acceptable; Toxicity Category IV.

5. *Primary dermal irritation (OPPTS 870.2500; 152-14; MRIDs 452740–03 and 452736–02).* Three each adult rabbits were treated with 0.5 g of LPE E94T mixed with 0.95 mL water or 35% LPE dermally for 4 hours and observed for the following 72 hours. No irritation was noted on any rabbit. LPE E94T and 35% LPE were non-irritants. Classification: Acceptable; Toxicity Category IV.

6. *Hypersensitivity (OPPTS 870.2600; 152–15; MRIDs 454357–01 and 452736–*

05). Thirty-eight each adult male guinea pigs were used to test the potential for dermal sensitization of LPE E94T or 35% LPE by a Magnusson and Kligman maximization method. All animals survived and gained weight throughout the studies. Mild to moderate erythema and edema reactions with scab formation at the injection sites were noted on all test and control animals throughout the observation period. Following challenge, all treated test animals showed scattered mild redness to intense redness and swelling on the right side. The left side, treated with sterile water, showed no irritation after challenge. None of the control animals in either study showed irritation on either side 24 and 48 hours after challenge. Both LPE E94T and 35% LPE were extreme dermal sensitizers.

Data Waivers (Ref. 6) were requested for the following studies:

Studies to detect genotoxicity (OPPTS 870.5300)

Immune response (OPPTS 880.3800)

Mammalian mutagenicity test (OPPTS 870.5195)

90-Day feeding (1 species) (OPPTS 870.3100)

90-Day dermal (1 species) (OPPTS 870.3250)

90-Day inhalation (1 species) (OPPTS 870.3465)

Teratogenicity (1 species) (OPPTS 870.3700)

Chronic exposure (OPPTS 870.4100) (Tier III)

Oncogencity (OPPTS 870.4200) (Tier III)

The registrant submitted additional information to support waivers from the data requirements for additional acute toxicity testing, subchronic toxicity testing, and chronic toxicity testing (Ref. 6). The registrant's rationale to support the waivers is that LPE is ubiquitous in nature and this and related phospholipids are synthesized by microorganisms, plants, and animals. These compounds are also ubiquitous in the human diet. Also, phospholipids have specific roles in cellular functions and in maintaining the integrity of cell membranes. Much of these data regarding LPE and related phospholipids were submitted in support of similar waivers in conjunction with a temporary tolerance exemption (see 40 CFR 180.1199) (Ref. 5) for the use of this active ingredient under an Experimental Use Permit (EPA Reg. No. 70515–EUP–1). See also memo from Russell Jones, Ph.D. to Sheila Moats, Ph.D., October 8, 1997 (Ref. 7). The aforementioned data may be bridged to support the current waiver requests. In addition, there is a long history of consumption by humans of lipids in food and the Agency knows of no instance where lipids have been associated with any toxic effects related to the consumption of food. Due to this knowledge of LPE's presence and function in the human system (Ref. 1) and the recent acute testing, EPA believes LPE is unlikely to be carcinogenic or have other long-term toxic effects.

V. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. *Food*. Because LPE is a naturally occurring fat present in all living organisms, there is a great likelihood of exposure to naturally occurring LPE for most, if not all individuals, including infants and children. As mentioned above, LPE is found in human breast milk, cow milk, corn grain, starch, oats and plant tissues and high quantities are found in both egg yolk and meats (Ref. 1). Thus, LPE is a normal part of the human diet. To date, there have been no reports of any hypersensitivity incidents or reports of any known adverse reactions in humans resulting from exposure to LPE. A gallon of end-use product can be produced from the LPE equivalent to that found in six eggs (Ref. 5). The product would then be diluted to achieve the 25-400 ppm of LPE proposed for final spray or dip use. Even if there is a significant increase in exposure to LPE due to its use as a pesticide, the battery of acute toxicity studies submitted by the registrant demonstrating very low mammalian toxicity (Toxicity Categories III and IV) indicates that risk associated with acute exposures by the oral, dermal and inhalation routes would be low to non-existent.

2. *Drinking water exposure*. LPE may get into surface water during run-off, but dissipation of LPE in the environment will, in all likelihood, be through microbial mediated degradation which will rapidly remove the residues (Ref. 1). The levels of residues that might get into ground or surface water used for drinking water will not be high compared to the exposure from naturally occurring residues of LPE.

B. Other Non-Occupational Exposure

The potential for non-dietary exposure to LPE pesticide residues for the general population, including infants and children, is unlikely because potential use sites are commercial, agricultural, and horticultural. However, because LPE is a natural fat present in all cellular organisms, there is a great likelihood of prior exposure for most, if not all, individuals. LPE is a normal part of the human diet and the increased exposure due to this proposed product would be negligible.

VI. Cumulative Effects

The Agency has considered the cumulative effects of LPE and other substances in relation to a common mechanism of toxicity. These considerations include the possible cumulative effects of such residues on infants and children. There is no indication of mammalian toxicity at the maximum doses tested, of this or other products containing LPE.

VII. Determination of Safety for U.S. Population, Infants and Children

1. *U.S. population*. There is reasonable certainty that no harm will result from aggregate exposure to residues of LPE to the U.S. population. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion based on the very low levels of mammalian toxicity (no toxicity at the maximum doses tested, Toxicity Categories III and IV) associated with LPE and the long history of safe use and consumption of LPE.

2. *Infants and children*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of exposure (safety) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. Margins of exposure (safety) are often referred to as uncertainty (safety) factors. In this instance, based on all the available information, the Agency concludes that LPE is practically non-toxic to mammals, including infants and children. Thus, there are no threshold effects of concern and, as a result the provision requiring an additional margin of safety does not apply. Further, the provisions of consumption patterns, special susceptibility, and cumulative effects do not apply. As a result, EPA has not used a margin of exposure

(safety) approach to assess the safety of LPE.

VIII. Other Considerations

A. Endocrine Disruptors

EPA is required under the FFDCA as amended by FQPA to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) ''may have an effect in humans that is similar to an effect produced by a naturally-occurring estrogen, or other such endocrine effects as the Administrator may designate.'' Following the recommendations of its Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), EPA determined that there is no scientific basis for including, as part of the program, the androgen- and thyroid hormone systems in addition to the estrogen hormone system. EPA also adopted EDSTAC's recommendation that the program include evaluations of potential effects in wildlife. For pesticide chemicals, EPA will use FIFRA and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCA authority to require wildlife evaluations. As the science develops and resources allow, screening of additional hormone systems may be added to the Endocrine Disruptor Screening Program(EDSP). When the appropriate screening and/or testing protocols being considered under the Agency's Endocrine Disruptor Screening Program have been developed, LPE may be subjected to additional screening and/or testing to better characterize effects related to endocrine disruption.

Based on available data, no endocrine system-related effects have been identified with consumption of LPE. It is a naturally occurring residue in raw agricultural food, feed commodities and processed food. To date, there is no evidence to suggest that LPE affects the immune system, functions in a manner similar to any known hormone, or that it acts as an endocrine disruptor.

B. Analytical Method(s)

The Agency proposes to establish an exemption from the requirement of a tolerance without any numerical limitation for the reasons stated above, including LPE's lack of mammalian toxicity. For the same reasons, the Agency has concluded that an analytical method is not required for enforcement purposes for LPE.

C. Codex Maximum Residue Level

There are no Codex Maximum Residue Levels established for residues of LPE.

IX. Conclusions

Based on the toxicology data submitted, there is reasonable certainty no harm will result from aggregate exposure of residues of LPE to the U.S. population, including infants and children, when the proposed product is used in accordance with good agricultural practices. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion based on data submitted demonstrating no toxicity at the maximum doses tested and the long history of safe use and consumption of naturally occurring LPE. As a result, EPA establishes an exemption from tolerance requirements pursuant to FFDCA 408(c) and (d) for residues of LPE in or on all food commodities.

X. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301212 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before June 10, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential 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. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request

with the Hearing Clerk as described in Unit IX.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket number OPP–301212, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

XI. References

1. JP BioRegulators, Inc. A Review on Lysophosphatidylethanolamine and Related Phospholipids, 2000.

2. Nutra-Park Inc. Effect of LPE Applications, 2002.

3. USEPA. Science review in support of registration of LPE E94T Technical and LPE–94 20% Aqueous Growth Regulator; Memo from Jones, Russell S., Ph.D., September 13, 2001.

4. USEPA. Data Evaluation Record: Skin Sensitization (MRID 454357–01), Reilly, Sheryl K., Ph.D., January 21, 2002.

5. Palta, Jiwan, Ph.D. and Hartman, Christina L., Ph.D.: Phospholipid Safety Data in Support of a Petition Proposing a Temporary Exemption from the Requirement of a Tolerance for Phospholipid for Use in Grapes, Tomatoes, Apples, Pear, Peaches, Nectarines, Citrus, Cranberries, and Strawberries, 1997 (MRID 443399–05).

6. JP BioRegulators, Inc.: Waiver Request from Biochemical Pesticides Toxicology Data Requirements, 2000.

7. USEPA. An Experimental Use Permit (EUP) and Petition for a Temporary Tolerance Exemption for Phospholipid; Memo from Jones, Russell S., Ph.D. to Sheila Moats, Ph.D., October 8, 1997.

XII. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications '' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 26, 2002.

James Jones,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.1199 is revised to read as follows:

§ 180.1199 Lysophosphatidylethanolamine (LPE); exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the biochemical pesticide lysophosphatidylethanolamine in or on all food commodities.

[FR Doc. 02–8829 Filed 4–10–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7168–8]

Washington: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Washington applied to the United States Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA has reached a final determination that these changes to the Washington hazardous waste program satisfy all requirements needed to qualify for final authorization. Thus, with respect to these revisions, EPA is granting final authorization to the State to operate its program subject to the limitations on its authority retained by EPA in accordance with RCRA, including the Hazardous and Solid Waste Amendments of 1984.

EFFECTIVE DATE: Final authorization for the revisions to Washington's hazardous waste management program shall be effective at 1 p.m. on April 11, 2002.

FOR FURTHER INFORMATION CONTACT: Nina Kocourek, U.S. EPA, Region 10, Office of Waste and Chemicals Management, 1200 Sixth Avenue, Mail Stop WCM–122, Seattle, Washington 98101, phone (206) 553–6502.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to and consistent with the Federal program. States are required to have enforcement authority which is adequate to enforce compliance with the requirements of the hazardous waste program. Under RCRA section 3009, States are not allowed to impose any requirements which are less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in Title 40 of the Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

Washington initially received final authorization on January 30, 1986, effective January 31, 1986 (51 FR 3782), to implement the State's dangerous waste management program. EPA also granted authorization for changes to Washington's program on September 22, 1987, effective on November 23, 1987 (52 FR 35556); August 17, 1990, effective October 16, 1990 (55 FR 33695); November 4, 1994, effective November 4, 1994 (59 FR 55322); February 29, 1996, effective April 29, 1996 (61 FR 7736); September 22, 1998, effective October 22, 1998 (63 FR 50531); and on October 12, 1999, effective January 11, 2000 (64 FR 55142). On August 2, 2001, Washington submitted a final program revision application to EPA in accordance with 40 CFR 271.21 seeking authorization of changes to the State program. On January 15, 2002, EPA published its preliminary decision announcing its intent to grant Washington final authorization for revisions to its federally authorized hazardous waste program. Further background on the tentative determination to grant authorization appears at 67 FR 1931–1937 (January 15, 2002).

B. What Were the Comments and Responses to EPA's Proposal?

Along with the tentative determination in EPA's proposal, EPA also announced the availability of the authorization revision application for public comment. The public comment period ended on February 14, 2002. EPA received one written comment during the public comment period. The significant issues raised by the commenter are summarized and responded to below.

The commenter asserts that the Washington Commercial Fertilizer Act, Chapter 15.54 RCW, acts to circumvent and knowingly violate the Washington Dangerous Waste Regulations, WAC 173–303. EPA reviewed the Washington Commercial Fertilizer Act, also known as the fertilizer registration act, to determine the validity of the commenter's assertion. Although implemented by the Washington Department of Agriculture, the legislative intent of the fertilizer registration act, as stated in RCW 15.54.265, is to ensure that all fertilizers in Washington meet standards for allowable metals, that fertilizer purchasers and users know about the contents of fertilizer products in Washington, that the oversight authority of the Washington Department of Ecology (Ecology) over waste-derived fertilizers be clarified, and that better information be provided to the Washington public on fertilizers, soils, and potential health effects. EPA found nothing in the fertilizer registration act, per se, to circumvent or knowingly violate the Washington Dangerous Waste regulations.

The fertilizer registration act, at RCW 15.54.270(34), defines waste-derived fertilizers as commercial fertilizers derived in whole or in part from solid waste as defined in chapter 70.95 or 70.105 RCW, or rules adopted thereunder, excluding biosolids regulated under chapter 70.95J RCW or wastewaters regulated under chapter 90.48 RCW. Before the Washington Department of Agriculture can register a waste-derived fertilizer or micronutrient fertilizer, it must obtain written approval from Ecology as provided by RCW 15.54.820. For waste-derived fertilizers, Ecology must evaluate

whether the use of a proposed waste-derived fertilizer or micronutrient fertilizer in Washington is consistent with the state solid waste management act, chapter 70.95 RCW, the hazardous waste management act, chapter 70.105 RCW, and RCRA. In performing this evaluation, Ecology must apply the standards adopted by the Washington Department of Agriculture at RCW 15.54.800, which are based on specific standards for metals adapted from Canadian standards. If more stringent standards apply under chapter 173–303 WAC for the same constituents, Ecology is required to use the more stringent standards from the hazardous waste regulations. RCW 15.54.820. This assessment for purposes of fertilizer registration in the State of Washington does not preempt the independently applicable regulations for hazardous waste management in the State.

The commenter asserts that the fertilizer registration act defies the RCRA mandate to ban open dumping of solid wastes on the land. EPA regulations specifically consider the application of waste-derived products on the land and such placement is not prohibited. Rather than prohibiting its use, a waste-derived fertilizer, also known as a waste-derived product, is required to meet the same treatment standards as if the product was to be disposed in a landfill. EPA's regulations at 40 CFR part 266, subpart C, place controls on the management of hazardous wastes before such wastes are made into a fertilizer. This use of hazardous waste is a type of recycling which in EPA's regulations is referred to as ''use constituting disposal.'' A fertilizer produced from hazardous waste is an example of a use constituting disposal. Consistent with section 1003 of RCRA, EPA encourages materials recovery and properly conducted recycling and reuse as an integral component of the RCRA cradle-to-grave waste management system. Rather than prohibiting the use of waste-derived fertilizers, EPA promulgated regulations to require that hazardous wastes that are going to be made into fertilizers be managed in accordance with all applicable hazardous waste management requirements until the wastes are made into a fertilizer. Washington adopted these ''use constituting disposal'' rules, 40 CFR 266.20, 266.21 and 266.22, as WAC 173–303–505(1)(a) and (b). The hazardous waste program in Washington is authorized for these rules. Under the federal RCRA and state authorized rules, a generator of a hazardous waste that is going to be made into a fertilizer is required to comply with the RCRA generator requirements, including manifesting off-site shipments of the wastes. The owners and operators of facilities that store recyclable materials that are to be used in a manner that constitutes disposal, but who are not themselves the ultimate users of the materials, are regulated under all applicable provisions of 40 CFR parts 264 and 265, 268 and parts 270 and 124 and all corresponding federally authorized state analogs. A RCRA permit is generally required for storage of these wastes by fertilizer manufacturers.

Because the use of waste-derived products on the land is also a type of land disposal, EPA requires that all waste-derived products (except for K061 derived fertilizers [1]) meet the applicable LDR treatment standards prior to the land disposal of such wastes. This includes meeting the ''Phase IV'' (May 26, 1998, 63 FR 28556) treatment standards. Under EPA's regulations, manufacturers of waste derived fertilizers must provide notice and certify compliance with LDR standards, 40 CFR 268.7, and notify the authorized agency (EPA or the authorized state agency implementing the authorized hazardous waste program) of each shipment of product made from recycled hazardous waste. 40 CFR 268.7(b)(6).

The commenter asserts that the Washington authorized hazardous waste program is not implementing the requirements of the RCRA regulations at 40 CFR part 266, subpart C because Washington is not implementing the Phase IV LDR regulations. Washington's authorized hazardous waste program does not currently include the Phase IV LDR standards. Today's final rule will authorize the Phase IV LDR standards adopted by Washington in chapter 173–303 WAC. As a matter of state law, Washington has been implementing its State Phase IV LDR standards since the effective date of the State law. The Phase IV standards which EPA promulgated as HSWA regulations are implemented directly by EPA in States with authorized hazardous waste programs, such as Washington, until the State regulations are authorized by EPA. For purposes of federal RCRA, the LDR standards that must be complied with include the Phase IV standards and include LDR treatment standards for all constituents subject to treatment before disposal on the land.

The commenter asserts that Ecology is reviewing the use of waste-derived fertilizers against the Phase III LDR standards rather than the Phase IV standards. However, as was discussed earlier, in assessing waste-derived fertilizers for purposes of fertilizer registration in the State of Washington, Ecology is required to use the more stringent standards that apply under chapter 173–303 WAC for the constituents addressed by the standards adopted by the Washington Department of Agriculture in RCW 15.54.800. For purposes of hazardous waste management, the fertilizer registration act does not preempt the applicability of the LDR standards, including the more stringent Phase IV LDR standards.

The commenter asserts that the fertilizer registration act limits Washington's review of waste-derived fertilizers to nine metals, enhances the probability of dilution of hazardous waste by registering the fertilizer as a whole product rather than looking at each recyclable material, and fails to test total chromium or address total metals. The fertilizer registration act requires that the Washington Department of Agriculture obtain written approval from Ecology before the Department of Agriculture can register a waste-derived fertilizer or micronutrient fertilizer in Washington. (RCW 15.54.800). Ecology assesses whether or not to provide written approval for registration to the Department of Agriculture based on the screening criteria in the fertilizer registration act and based on applicable hazardous waste regulations. The Washington legislature clearly intended that the regulation of waste-derived fertilizer be under the domain of Ecology rather than the Department of Agriculture. Notwithstanding the nine-metal screening criteria found in the fertilizer registration act, the LDR regulations in the Washington Dangerous Waste regulations are applicable independently of the fertilizer registration act. Under current EPA regulations, manufacturers of fertilizers made from recycled hazardous wastes are required to comply with applicable LDR treatment standards for the hazardous wastes which they contain before the fertilizer may be used (40 CFR 268.40) and a notice of each shipment of each fertilizer product must be submitted to the authorized agency (EPA before the State is authorized and the authorized State afterwards) (40 CFR 268.7(b)(6)). These treatment standards must be met for characteristic hazardous wastes even if the product does not exhibit a

[1] EPA has proposed to remove the regulatory provision which currently exempts fertilizer made from K061 from having to meet applicable LDR standards in EPA's proposed rule ''Requirements for Zinc Fertilizers Made from Recycled Hazardous Secondary Materials,'' dated November 28, 2000. 65 FR 70958.

hazardous waste characteristic. The LDR standards set limits for certain metals in hazardous wastes before the waste or waste product can be applied to the land.

C. What Decisions Have We Made in This Rule?

EPA has made a final determination that Washington's application for authorization of the revisions to the Washington authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, with respect to the revisions, we are granting Washington final authorization to operate its hazardous waste program as described in the revision authorization application. Washington's authorized program will be responsible for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of RCRA, including the Hazardous and Solid Waste Amendments of 1984 (HSWA). Regulatory revisions which are less stringent than Federal program requirements and those regulatory revisions which are broader in scope than Federal program requirements are not part of this final authorization decision. Washington's authorized program does not extend to Indian country, except that Washington does have jurisdiction over non-trust lands within the 1873 Survey Area of the Puyallup Reservation as defined in the Settlement Agreement between the Puyallup Tribe, Federal, State and local governments dated August 27, 1988. Within the 1873 Survey Area of the Puyallup Reservation, EPA retains jurisdiction and authority to implement RCRA over Indian country and over trust lands, Indians and Indian activities.

New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA are implementable by EPA and take effect in States with authorized programs before such programs are authorized for the requirements. Thus, EPA will implement those HSWA requirements and prohibitions in Washington, including issuing permits, until the State is granted authorization to do so.

D. What Will Be the Effect of Today's Action?

A facility in Washington subject to RCRA must comply with the authorized State program requirements and with any applicable Federally-issued requirements, such as, for example, the federal HSWA provisions for which the State is not authorized, and RCRA requirements that are not supplanted by authorized State-issued requirements, in order to comply with RCRA. Washington has enforcement responsibilities under its State hazardous waste program for violations of its currently authorized program and will have enforcement responsibilities for the revisions which are the subject of this final rule. EPA continues to have independent enforcement authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements, including State program requirements that are authorized by EPA and any applicable Federally-issued statutes and regulations, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This final action approving these revisions will not impose additional requirements on the regulated community because the regulations for which Washington's program are being authorized are already effective under State law.

E. What Rules Are We Authorizing With Today's Action?

EPA is granting final authorization for the revisions to Washington's federally authorized program described in Washington's final complete program revision application, submitted to EPA on August 2, 2001, and deemed complete by EPA on September 19, 2001. We have made a final determination that Washington's hazardous waste program revisions, as described in this rule, satisfy the requirements necessary for final authorization. Regulatory revisions which are less stringent than Federal program requirements and those regulatory revisions which are broader in scope than Federal program requirements are not authorized.

The following table (Table 1) identifies equivalent and more stringent analogues to the Federal regulations for those regulatory revisions Washington requested authorization for. All of the referenced analogous state authorities were legally adopted and effective as of June 10, 2000.

TABLE 1.—EQUIVALENT AND MORE STRINGENT ANALOGUES TO THE FEDERAL REGULATIONS [1]

Checklist [4]	Federal requirements	Federal Register	Analogous state authority (WAC 173–303– * * *)
17P [2]	Interim Status	50 FR 28702, 7/15/85	803(1), 803(2); 806(2)(a) 806(2)(b); 806(8); 803(2)(a), 803(2)(b); 810(11)(c), 810(11)(e); 805(1)(b), 805(1)(c), 805(8)(f)(i), 805(8)(f)(ii), 805(8)(g), 805(8)(h), 805(8)(i), 805(8)(j).
144	Removal of Legally Obsolete Rules.	60 FR 33912, 06/29/95	803(2)(b), 803(4)(b), 803(5)(a)(i), 803(5)(a)(i)(A), 803(5)(a)(i)(B), 803(5)(a)(i)(C).
148 [2]	RCRA Expanded Public Participation.	60 FR 63417, 12/11/95	281(4) and 281(4)(a), 281(4)(b), 281(4)(c), 281(4)(d), 281(4)(d)(i), 281(4)(d)(i)(A), 281(4)(d)(i)(B), 281(4)(d)(i)(C), 281(4)(d)(i)(D), 281(4)(d)(ii), 281(4)(d)(ii)(A), 281(4)(d)(ii)(B), 281(4)(d)(ii)(C), 281(4)(d)(ii)(D), 281(4)(d)(ii)(E); 281(5), 281(5)(a), 281(5)(b), 281(5)(b)(i), 281(5)(b)(ii), 281(5)(b)(ii)(A), 281(5)(b)(ii)(B), 281(5)(b)(ii)(C), 281(5)(b)(ii)(D), 281(5)(b)(ii)(E), 281(5)(b)(ii)(F), 281(5)(b)(iii), 281(6) and 281(6)(a), 281(6)(b), 281(6)(c), 281(6)(d), 281(6)(e), 281(6)(f); 040; 806(4)(a)(xxv); 810(16); 804(6)(a); 807(6), 807(6)(a), 807(6)(b), 807(6)(b)(i), 807(6)(b)(ii), 807(6)(b)(iii), 807(6)(b)(iv), 807(7), 807(8)–(11), 807(14).

TABLE 1.—EQUIVALENT AND MORE STRINGENT ANALOGUES TO THE FEDERAL REGULATIONS [1]—Continued

Checklist [4]	Federal requirements	Federal Register	Analogous state authority (WAC 173–303– * * *)
151	Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners.	61 FR 15566, 04/08/96; 61 FR 15660, 04/08/96; 61 FR 19117, 04/30/96; 61 FR 33680, 06/28/96; 61 FR 36421, 07/10/96; 61 FR 43924, 08/26/96; 62 FR 7502, 02/19/97.	140 (2)(a).
153	Conditionally Exempt Small Quantity Generator Disposal Options Under Subtitle D.	61 FR 34252, 07/01/96	070(8)(b), 070(8)(b)(iii), 070(8)(b)(iii)(A), 070(8)(b)(iii)(B), 070(8)(b)(iii)(E), 070(8)(b)(iii)(F), 070(8)(b)(iii)(D), 070(8)(b)(iii)(H).
154 [2]	Consolidated Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers: (Includes CC and the 300 hour BB exemption).	59 FR 62896, 12/06/94; 60 FR 26828, 05/19/95; 60 FR 50426; 09/29/95; 60 FR 56952; 11/13/95; 61 FR 4903, 02/09/96; 61 FR 28508; 06/05/96; 61 FR 59932; 11/25/96.	692(3); 110(3)(g)(ix), 110(3)(g)(x); 120(4)(d), 120(4)(e); 200(1)(b)(i), 200(1)(b)(ii); 201(e); 300(5)(f), 300(5)(i), 300(5)(i)(A), 300(5)(i)(B); 320(2)(c); 380(1)(c), 380(1)(f), 390(3)(d); 630(11); 640(11); 650(12); 680(2); 690(1)(b), 690(1)(b)(i), 690(1)(b)(ii), 690(1)(b)(iii), 690(1)(c), 690(2); 691(1)(b), 691(1)(b)(i), 691(1)(b)(ii), 691(1)(b)(iii), 691(1)(f), 691/note at end of (1), 691(2); 692(1)(a), 692(1)(b), 692(1)(b)(i), 692(1)(b)(ii), 692(1)(b)(iii), 692(1)(b)(iv), 692(1)(b)(v), 692(1)(b)(vi), 692(1)(b)(vii), 692(1)(b)(viii), 692(1)(c), 692(1)(d), 692(1)(d)(i), 692(1)(d)(ii), 692(1)(d)(iii); 692(2); 400(2)(a); 300(5)(f), 300(5)(i), 300(5)(i)A), 300(5)(i)(B); 320(2)(c); 380(1)(c), 380(1)(f); 390(3)(d); 400(3)(a); 810(8)(a)(ii), 810(8)(a)(iii), 810(8)(a)(iv); 806(4)(a)(v), 806(4)(b)(vi), 806(4)(c)(xiii), 806(4)(d)(xi), 806(4)(m).
156 [2]	Military Munitions Rule Hazardous Waste Identification and Management; Explosives Emergencies; Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways on Contiguous Properties.	62 FR 6622, 02/12/97	040; 016(3)(b)(iii), 016(3)(b)(iv); 170(5); 180(6); 240(10); 600(3)(p), 600(3)(p)(i)(D), 600(3)(p)(iv), 600(3)(q); 693(l), 693(2)(a), 693(2)(a)(i), 693(2)(a)(ii), 693(2)(a)(iii), 693(2)(a)(iv), 693(2)(a)(v), 693(2)(b), 693(2)(b)(i), 693(2)(b)(i)(A), 693(2)(b)(i)(B), 693(2)(b)(i)(B)(I)–(III), 693(2)(b)(i)(C), 693(2)(b)(ii), 693(2)(b)(iii), 693(2)(c), 693(2)(d), 693(2)(e), 693(2)(f); 693(3)(a), 693(3)(b); 400(2)(c)(xiii)(A)(IV), 400(2)(c)(xiii)(D), 400(2)(c))(xii), 400(3)(b); 400(3)(c)(xii); 578(1)(a), 578(1)(b), 578(2)(a), 578(2)(a)(i), 578(2)(a)(i)(A), 578(2)(a)(i)(B), 578(2)(a)(i)(C), 578(2)(a)(ii), 578(2)(b), 578(2)(b)(i), 578(2)(b)(ii), 578(2)(b)(iii), 578(2)(b)(iv), 578(2)(c), 578(2)(c)(i), 578(2)(c)(ii), 578(2)(d), 578(3), 578(4)(a), 578(4)(a)(i), 578(4)(a)(i)(A), 578(4)(a)(i)(B), 578(4)(a)(i)(C), 578(4)(a)(i)(D), 578(4)(a)(i)(E), 578(4)(a)(i)(F), 578(4)(a)(i)(G), 578(4)(a)(ii), 578(4)(a)(iii), 578(4)(b), 578(4)(c); 578(5); 800(7)(c)(i)(D), 800(7)(c)(i)(E); 830(4)(h), 830(4)(h)(i), 830(4)(h)(ii), 830(4)(h)(iii), 830(4)(i).
157	Land Disposal Restrictions Phase IV—Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions From RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions.	62 FR 25998, 05/12/97	040; 016(2)(l), 016(2)(m), 016(2)(n), 016(2)(o); 016(5) Table 1; 071(3)(ff), 071(3)(gg), 071(3)(gg)(i), 071(3)(gg)(ii); 120(2)(a)(iv); 140(2)(a).
158	Testing Monitoring Activities Amendment III.	62 FR 32452, 06/13/97	110(1); 110(3)(h)(v), 110(3)(h)(vi), 110(3)(g)(i), 110(3)(g) (ii), 110(3)(g)(iii), 110(3)(g)(iv), 110(3)(g)(v), 110(3)(g)(vi), 110(3)(g)(viii), 110(3)(h)(i), 110(3)(a), 110(3)(h)(ii), 110(3)(h)(iii), 110(3)(h)(vii), 110(3)(g)(x); 690(2); 691(2); 645(4)(a); 400(3)(a).
162	Clarification of Standards for Hazardous Waste LDR Treatment Variances.	62 FR 64504, 12/05/97	140 (2)(a).
163	Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers; Clarification and Technical Amendment: (AA, BB, CC).	62 FR 64636, 12/08/97	320(2)(c); 380(1)(f); 690(1)(b)(iii), 690(1)(c), 690(1)(d); 690(2); 691(1)(b)(iii), 691(1)(c), 691(1)(f), 691(2); 692(1)(b)(i), 692(1)(c), 692(2); 320(2)(c); 400(3)(a); 806(4)(a)(v).
164	Kraft Mill Steam Stripper Condensate Exclusion.	62 FR 18504, 04/15/98	071(3)(mm).

TABLE 1.—EQUIVALENT AND MORE STRINGENT ANALOGUES TO THE FEDERAL REGULATIONS [1]—Continued

Checklist [4]	Federal requirements	Federal Register	Analogous state authority (WAC 173–303– * * *)
167A	Land Disposal Restriction Phase IV —Treatment Standards for Metal Wastes and Mineral Processing Wastes.	63 FR 28556, 05/26/98	140(2)(a).
167B	Land Disposal Restriction Phase IV —Hazardous Soils Treatment Standards and Exclusions.	63 FR 28556, 05/28/98	140(2)(a).
167C	Land Disposal Restrictions Phase IV—Corrections.	63 FR 28556, 05/26/98	140(2)(a).
167F	Exclusion of Recycled Wood Preserving Wastewater.	63 FR 28556, 05/26/98	071(3)(w)(iii), 071(3)(w)(iii)(A), 071(3)(w)(iii)(B), 071(3)(w)(iii)(C), 071(3)(w)(iii)(D), 071(3)(w)(iii)(E).
169 [2]	Petroleum Refining Process Wastes.	63 FR 42110, 08/06/98	071(3)(p), 071(3)(jj); 071(3)(cc)(i), 071(3)(cc)(ii), 071(3)(hh), 071(3)(hh)(i), 071(3)(hh)(ii), 071(3)(ii); 016(5)(d)(ii); 120 (2)(a)(viii)(c); 9904; 082(4); 140(2)(a).
170	Land Disposal Restrictions Phase IV—Zinc Micro nutrient Fertilizers, Amendment.	63 FR 46332, 08/31/98	140(2)(a).
171	Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes from carbamate Production.	63 FR 47410, 09/04/98	140(2)(a).
172	Land Disposal Restriction Phase IV —Extension of Compliance Date for Characteristic Slags.	63 FR 48124, 09/09/98	140(2)(a).
173	Land Disposal Restrictions; Treatment Standards for Spent Potliners from Primary Aluminum Reduction Rule (K088); Final Rule.	63 FR 51254, 09/24/98	140(2)(a).
174 [3]	Post Closure Permit Requirement and Closure Process: Requirements for alternative groundwater monitoring requirements for regulated units colocated with SWMU's where both types of units have released to the environment..	63 FR 56710, 10/22/98	645(1)(e), 645(1)(e)(i), 645(1)(e)(ii); 610(1)(d), 610(1)(d)(i), 610(1)(d)(ii); 610(3)(a)(ix), 610(3)(b)(ii)(D); 610(8)(b)(iv), 610(8)(d)(ii)(D); 620(1)(d), 620(1)(d)(i), 620(1)(d)(ii); 400(3)(a).
175 [2]	HWIR-Media	63 FR 65874, 11/30/98	040; 071(3)(11) first line, 071(3)(11)(i) through (iii); 280(5); 280(6), 280(6)(a), 280(6)(b), 280(6)(c), 280(6)(d), 280(6)(e), 280(6)(f), 280(6)(g), 280(6)(h), 280(6)(i), 280(6)(j), 280(6)(k); 646(1)(c); 646(4)(a), 646(7)(a), 646(8); 400(2)(a); 140(2)(a); 810(13)(a); 830 Appendix 1, D.3.g.; 830, Appendix 1, N.3.
176	Universal Waste Rule—Technical Amendments.	63 FR 71225, 12/24/98	520(1), 520(2), 520(2)(a), 520(2)(b), 520(2)(c); 040.
177	Organic Air Emission Standards Clarification and Technical Amendments: (AA, BB, CC).	64 FR 3382, 01/21/99	200(1)(b)(i), 200(1)(b)(ii); 690(2); 692(1)(v), 692(2); 400(3), 400(3)(a).
178	Petroleum Refining Process Wastes—Leachate Exemption.	64 FR 6806, 02/11/99	071(3)(kk), 071(3)(kk)(i), 071(3)(kk)(ii), 071(3)(kk)(iii), 071(3)(kk)(vi), 071(3)(kk)(v).
179 [2]	Land Disposal Phase IV—Technical Corrections and Clarifications to Treatment Standards.	64 FR 25408, 05/11/99	016(5)(c); 016 Table 1; 017(2)(a)(iii); 201(2); 140(2)(a).
180	Test Procedures for Analysis of Oil and Grease and Non—Polar Material.	64 FR 26315, 05/14/99	110(3)(a), 110(3)(h)(iv).

TABLE 1.—EQUIVALENT AND MORE STRINGENT ANALOGUES TO THE FEDERAL REGULATIONS [1]—Continued

Checklist [4]	Federal requirements	Federal Register	Analogous state authority (WAC 173–303– * * *)
181 [2]	Universal Waste Rule Specific Provisions for Hazardous Waste Lamps.	64 FR 36466, 07/09/99	040; 077(2), 077(3); 600(3)(o)(ii), 600(3)(o)(iii); 400(2)(c)(xi)(B), 400(2)(c)(xi)(C); 140(2)(a); 800(7)(c)(iii)(B), 800(7)(c)(iii)(C); 573(1)(a)(ii), 573(1)(a)(iii), 573(2)(a)(i), 573(2)(b)(ii), 573(2)(b)(iii), 573(3)(a); 573(5)(a), 573(5)(b), 573(5)(b)(i), 573(5)(b)(ii), 573(5)(c), 573(5)(c)(i), 573(5)(c)(ii), 573(4)(a), 573(4)(a)(i), 573(4)(a)(ii), 573(4)(b), 573(6), 573(9)(c), 573(9)(c)(i), 573(9)(c)(ii), 573(9)(c)(iii), 573(10)(c), 573(17), 573(19)(b)(iv), 573(19)(b)(v), 573(20)(c), 573(20)(c)(i), 573(20)(c)(ii), 573(20)(c)(iii), 573(21)c), 573(28), 573(35)(a), 573(40)(a).
112, 122, 130, 166 (Special Consolidated Checklist [2]).	Recycled Used Oil Management Standards as of June 30, 1999.	57 FR 41566, 09/10/92; 58 FR 26420, 05/03/93; 58 FR 33341, 06/17/93; 59 FR 10550, 03/04/94; 63 FR 24963, 05/06/98; 63 FR 37780, 07/14/98.	040; 515(4); 071(3)(z), 071(3)(kk); 120(3); 120(3)(g), 120(3)(f); 120(2)(v), 120(2)(a)(viii)(A), 120(2)(a)(viii)(B), 120(2)(a)(viii)(C), 120(5); 600(5); 510(1)(b)(i); 515(2), 515(3), 515(4), 515(5), 515(6), 515(6)(c), 515(7), 515(8), 515(9), 515(9)(a), 515(9)(b), 515(10), 515(11), 515(12).

[1] For further discussion on where the revised state rules differ from the Federal rules refer to section G. below, the authorization revision application, and the administrative record for this decision.
[2] State rule contains some more stringent provisions. For identification of more stringent state provisions refer to the authorization revision application and the administrative record for this decision.
[3] State does not seek authorization for enforceable documents in lieu of post-closure permits.
[4] Checklist generally reflect changes made to the Federal regulations pursuant to a particular FEDERAL REGISTER notice and EPA publishes these checklists as aids for states to use for the development of their authorization application. (See EPA's RCRA State Authorization web page at *http://www.epa.gov/epaoswer/hazwaste/state/rcra.)*

F. Where Are the Revised State Rules Different From the Federal Rules?

This section discusses some of the differences between the revisions Washington requested authorization for and those which are part of this final authorization decision. Not all program differences are discussed in this section because Washington writes its own version of the federal hazardous waste rules. This section discusses certain rules where EPA has made the finding that the State program is more stringent and will be authorized; it discusses rules where the State program is broader in scope and can not be authorized; and rules where the State program is less stringent than the federal requirements and will not be authorized. The State program will not be authorized for the less stringent or broader in scope rules. Less stringent State rules do not supplant federal regulations. Persons must consult the Table 1 for the specific State regulations which EPA is authorizing in today's final rule.

Certain portions of the federal program are not delegable to the states because of the Federal government's special role in foreign policy matters and because of national concerns that arise with certain decisions. EPA does not delegate import/export functions. Under the RCRA regulations found in 40 CFR part 262 EPA will continue to implement requirements for import/export functions. EPA does not delegate sections of 40 CFR part 268 because of the national concerns that must be examined when decisions are made under the following Federal Land Disposal Restriction requirements: 40 CFR 268.5—Procedures for case-by-case effective date extensions; 40 CFR 268.6—''No migration'' petitions; 40 CFR 268.42(b)—applications for alternate treatment methods; and 40 CFR 268.44(a)–(g)—general treatment standard variances. Washington's program has excluded these requirements from its state regulations and EPA will continue to implement these requirements under EPA's HSWA authority. The State requested authorization for 40 CFR 268.44(h) through (m), which are provisions for which states may receive authorization and are part of this authorization decision.

States are allowed to seek authorization for state requirements that are more stringent than federal requirements. EPA has authority to authorize and enforce those parts of a state's program EPA finds to be more stringent than the federal program. This section does not discuss each more stringent finding made by EPA, but persons can locate such sections by consulting Table 1, referenced above, as well as by reviewing the docket for this rule. The State program is authorized for each more stringent requirement as a part of this rulemaking.

The State program does not provide generators with an exemption from the manifest requirements as found in the federal regulations at 40 CFR 262.20(f) or transporters as found at 40 CFR 263.10(f). Generators and transporters in Washington will have to comply with the more stringent state paperwork requirements. The State program is more stringent than the federal program because the State regulations do not allow Remedial Action Plans as found in the federal requirements at 40 CFR part 270, subpart H. The State's program is more stringent than the federal program at 40 CFR 261.5(j) because the State has not adopted this provision. Conditionally exempt small quantity generator hazardous waste mixed with used oil is subject to full regulation as a hazardous waste mixture. The State program is also more stringent than the federal requirements at 40 CFR 273.9 because the State's definition of universal waste does not allow pesticides to be managed as universal waste.

The State program is more stringent in certain places than the federal military munitions rule. The State did not adopt the alternative requirements for transportation of waste military munitions between military installations as is found in the federal program at 40 CFR 266.203(a)–(c) and is therefore more stringent than the federal program. With respect to chemical agents and chemical munitions slated for destruction pursuant to international treaties or agreements, the State identifies such chemical agents and chemical munitions as characteristic and/or listed hazardous waste. In the Military Munitions Rule, at 62 FR 6633, EPA said that states could be more stringent than the federal program for

chemical munitions. EPA finds the State program to be more stringent than the federal program in this area because the State rules do not contain a provision that differentiates between wastes that must be designated and waste chemical munitions or chemical munitions that are not considered wastes because they are scheduled for destruction pursuant to treaty or agreement. The State's regulations at WAC 173–303–693(3)(a) are found to be more stringent than the federal regulation at 40 CFR 264.1202(a) and WAC 173–303–400(3)(b), (c)(xii) is found to be more stringent than the federal regulation at 40 CFR 265.1202(a). EPA also said, at 62 FR 6649 in the Military Munitions Rule, that states did not have to include a conditional exemption for waste munitions storage in their programs. EPA also finds that the State's lack of a conditional exemption for waste munition storage, which is found in the federal regulations at 40 CFR 266.205(d), (d)(2), is more stringent than the federal program. Neither the federal regulations, nor the State program conditionally exempt chemical munitions and chemical agents from storage requirements.

The State did not seek authorization for the Standards for the Management of Waste Fuel and Used Oil for the Burning of these Materials in Boilers and Industrial Furnaces, 40 CFR 266.102 through 40 CFR 266.111. The State did not adopt these federal provisions as state law. EPA is implementing these BIF requirements in Washington State under EPA's HSWA authority. States are not allowed to seek authorization for state requirements that are broader in scope than federal requirements. EPA does not have authority to authorize and enforce those parts of a state's program EPA finds to be broader in scope than the federal program. Because the State has not adopted an analog to 40 CFR 261.4(b)(7)—exclusions for solid waste from the extraction, beneficiation, and processing of ores and minerals, the State's lack of an analog for the federal exclusion of mixtures of solid waste and hazardous waste which are hazardous based solely on a hazardous characteristic imparted to the waste as a result of a Bevill characteristic, 40 CFR 261.3(a)(2)(iii), is broader in scope than the federal program. EPA also finds the State's regulation at WAC 173–303–578(2)(e) to be broader in scope than the federal regulation at 40 CFR 266.202(a) because the State added a requirement for when munitions at closed and transferred ranges are considered solid wastes. EPA's final Military Munitions Rule did not include this requirement. This requirement in the State program is found to be broader in scope than the federal program.

Although State programs can be authorized where they are more stringent than the federal program, state programs cannot be authorized where they are less stringent. EPA finds the State's additional regulation at WAC 173–303–515(6) for generators of used oil who self-transport greater than 55 gallons per vehicle trip to a used oil collection center, without also designating as a used oil transporter, are less stringent than the federal provisions which limit generator self-transport of used oil to less than or equal to 55 gallons of used oil per vehicle trip. EPA also finds the State's additional regulation at WAC 171–303–515(7) for used oil collection centers to be less stringent because the regulation allows used oil collection centers to accept greater than 55 gallons of used oil from a generator who self-transports used oil to a used oil collection center. The direct impact of EPA's finding to generators and used oil collection centers in Washington is that generators and used oil collection centers will not be exempted from the State's federally authorized requirements which limit self-transport by generators to less than or equal to 55 gallons and used oil collection from a self-transporting generator to less than or equal to 55 gallons.

States sometimes make changes to their previously authorized programs for which they need to seek reauthorization. In Washington, the Permit by Rule provision at WAC 173–303–802(5) is broader in scope than the federal permit by rule regulations where it applies to state-only wastes. However, the State program is more stringent where the rule applies to federally regulated hazardous wastes generated on-site. The federal regulations at 40 CFR 270.1(c)(2)(iv) and (v) exempt owners and operators of totally enclosed treatment facilities, elementary neutralization units or wastewater treatment units, as defined at 40 CFR 260.10, from RCRA permitting requirements. The State requested reauthorization for these changes and EPA has determined that the more stringent portion of the rule is authorized and the broader in scope provision will not be authorized in this rulemaking.

The State did not seek authorization for the entire Post-Closure rule. While the State will be authorized for the portions of the rule that concern alternative requirements for co-located regulated units and solid waste management units which have commingled releases, the State did not seek, nor will the State be authorized for the portions of the rule that allow for the use of enforceable documents in lieu of post closure permits. Although the State did incorporate 40 CFR 265.118(c)(4) by reference into its regulations, the State did not seek authorization for this provision and will not be authorized for it.

G. Who Handles Permits After This Authorization Takes Effect?

Washington will issue permits for all the provisions for which it is authorized and will administer the permits it issues. All permits issued by EPA Region 10 prior to final authorization of this revision will continue to be administered by EPA Region 10 until the issuance or re-issuance after modification of a State RCRA permit and until EPA takes action on its permit. HSWA provisions for which the State is not authorized will continue in effect under the EPA-issued permit. EPA will continue to issue permits for HSWA requirements for which Washington is not yet authorized.

H. What Is Codification and Is EPA Codifying Washington's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by referencing the authorized State's authorized rules in 40 CFR part 272. EPA is reserving the amendment of 40 CFR part 272, subpart F for codification of Washington's program at a later date.

I. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Washington?

EPA's decision to authorize the Washington hazardous waste program does not include any land that is, or becomes after the date of this authorization, ''Indian Country,'' as defined in 18 U.S.C. 1151, with the exception of the non-trust lands within the exterior boundaries of the Puyallup Indian Reservation (also referred to as the ''1873 Survey Area'' or ''Survey Area'') located in Tacoma, Washington. EPA retains jurisdiction over ''Indian Country'' as defined in 18 U.S.C. 1151.

J. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to

review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not have Tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000). It does not have substantial direct effects on tribal governments, on the relationships between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply Distribution or Use'' (66 FR 28344, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. This action does not include environmental justice issues that require consideration under Executive Order 12898 (59 FR 7629, February 16, 1994).

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This final rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: April 2, 2002.

Ronald A. Kreizenbeck,

Deputy Regional Administrator, Region 10.

[FR Doc. 02–8533 Filed 4–10–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50606A; FRL–6805–1]

RIN 2070–AB27

Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for six chemical substances which were the subject of premanufacture notices (PMNs) and subject to TSCA section 5(e) consent orders issued by EPA. Today's action requires persons who manufacture, import, or process these substances to notify EPA at least 90 days before commencing the manufacturing or processing of a substance for a use designated by these rules as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use, and if necessary, to prohibit or limit that activity before it occurs to prevent any unreasonable risk of injury to human health or the environment.

DATES: This final rule is effective on May 13, 2002.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: James Alwood, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8974; e-mail address: alwood.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substances contained in this rule. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Chemical manufacturers	325	Manufacturers, importers, processors, and users of chemicals
Petroleum and coal product industries	324	Manufacturers, importers, processors, and users of chemicals

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 in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action

applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in title 40 of the Code of Federal Regulations (CFR) at 40 CFR 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or 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,'' ''Regulations and Proposed Rules,'' 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/. A frequently updated electronic version of 40 CFR part 721 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr721_00.html, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–50606A. 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 TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

II. Background

A. What Action is the Agency Taking?

This SNUR will require persons to notify EPA at least 90 days before commencing manufacturing, importing, or processing a substance for any activity designated by this SNUR as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first direct final SNUR published in the **Federal Register** of April 24, 1990 (55 FR 17376). Consult that preamble for further information on the objectives, rationale, and procedures for the rule and on the basis for significant new use designations including provisions for developing test data.

B. What is the Agency's Authority for Taking this Action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2) of TSCA. Expedited rulemaking procedures for SNURs are described in 40 CFR Part 721, Subpart D. Once EPA promulgates a rule designating a use of a chemical substance as a significant new use, section 5(a)(1)(B) of TSCA and 40 CFR Part 721 require persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. More detailed requirements are set forth in 40 CFR Part 721.

C. Applicability of General Provisions

General provisions for SNURs appear in subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same requirements and procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5 (h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under TSCA sections 5(e), 5(f), 6, or 7 to control the activities described in the SNUR notice. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified by the US Customs Service at 19 CFR 12.118 through 12.127 and 127.28(i). The EPA policy in support of these Customs regulations appears at 40 CFR part 707. Such persons must certify that they are in compliance with SNUR requirements.

III. Substances Subject to this Rule

In the **Federal Register** of May 27, 1993 (58 FR 30741), EPA proposed SNURs for six chemical substances which were the subject of premanufacture notices (PMNs) and subject to TSCA section 5(e) consent orders issued by EPA. The background and reasons for the SNURs are set forth in the preamble to the proposed rule.

EPA received no comments for the proposed SNURs for PMN Numbers P–84–105, P–84–106, and P–84–107, which were identified generically as substituted and disubstituted tetrafluoro alkenes. Therefore, EPA is issuing the SNURs as proposed. EPA received comments concerning the proposed rule for P–85–433, identified as 1-propanol, 3-mercapto-, and PMNs P–84–660 and P–84–704, identified as benzene, ethenyl-, ar-bromo- derivatives and benzene, (2-bromoethyl)-, ar-bromo derivatives. EPA is issuing modified final SNURs for P–85–433, P–84–660, and P–84–704 as described in the response to comments discussed in this unit.

The section number for P–84–660 was originally proposed as § 721.9540. In this final rule the section number for P–84–660 has been changed to § 721.1230. This change was necessary because during the period between issuance of the proposed rule and final rule, EPA mistakenly assigned § 721.9540 to another final SNUR for a different chemical substance.

The commenter for P–85–433 was the submitter of the original PMN and is subject to the TSCA 5(e) consent order for that substance. The commenter noted that the National Institute of Occupational Safety and Health (NIOSH) category 23 air purifying respirator required by the order is used during routine manufacturing activities and should also be permitted by the SNUR. As use of this respirator is an ongoing use, EPA will add it to the list of respirators that can be used by persons who are reasonably likely to be exposed by inhalation.

The commenter also asked EPA to clarify if the required respiratory protection is necessary for quality control activity conducted during the

manufacturing process with chemical hoods under negative pressure. EPA interprets the regulatory language in the consent order ''persons who may be exposed'' and the language in the SNUR ''person who is reasonably likely to be exposed to the chemical substance by inhalation'' as not applying to persons handling the substance in a chemical hood under negative pressure. Therefore, use in a chemical hood under negative pressure without respiratory protection does not require a SNUN. However, required respiratory equipment should be available if, for any reason, activities in the chemical hood are not conducted under negative pressure. The commenter felt that disposal by release into an evaporation pond increases the probability of exposures to vapors and should not be allowed. This method of disposal was identified during review of the PMN substance and is permitted by the TSCA section 5(e) consent order. EPA considers it an ongoing use and did not determine that disposal in an evaporation pond may present an unreasonable risk. Therefore, disposal by this method will be permitted but is not required.

The commenter for P–84–660 and P–84–704 was the submitter of the PMNs and is subject to the TSCA 5(e) consent order for those substances. The commenter noted there were no equivalent provisions in the SNUR for the New Chemicals Exposure Limits (NCELs) provisions found in the TSCA 5(e) consent order. This would require the commenter's customers to file a SNUN if they wanted to use the NCELs provisions in the consent order. EPA has added language in the final SNUR to include the NCELs provision. The commenter also identified several issues with provisions regarding de minimis levels, disposal restrictions, and the specific use of P–84–660 as a flame retardant in the SNUR that were not consistent with the TSCA 5(e) consent order, while noting a pending request to modify the TSCA 5(e) consent order that would also address these issues. The commenter stated that EPA should wait until the modifications were completed before issuing the final SNUR. After completing two modifications to the TSCA 5(e) consent order, EPA is issuing the final SNUR reflecting the changes in disposal restrictions and de minimis levels, while retaining the restriction for the specific use of P–84–660 as a flame retardant in the TSCA 5(e) consent order. The changes to the final SNUR will make it consistent with provisions in the TSCA 5(e) consent order. Retaining the SNUR provision limiting the specific use of P–84–660 as a flame retardant is also consistent with the provisions of the TSCA 5(e) consent order.

IV. Objectives and Rationale of the Rule

During review of the PMNs submitted for the chemical substances that are subject to these SNURs, EPA concluded that regulation was warranted under section 5(e) of TSCA, pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the substances. The basis for such findings is outlined in Unit III. Based on these findings, TSCA section 5(e) consent orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters. The SNUR provisions for these substances designated herein are consistent with the provisions of the TSCA section 5(e) consent orders.

EPA is issuing this SNUR for specific chemical substances which have undergone premanufacture review to ensure that:

1. EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins.
2. EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use.
3. When necessary, to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs.
4. All manufacturers, importers, and processors of the same chemical substance, which is subject to a TSCA section 5(e) consent order, are subject to similar requirements.

Issuance of a SNUR for a chemical substance does not signify that the substance is listed on the TSCA Inventory. Manufacturers, importers, and processors are responsible for determining whether or not a new chemical substance subject to a final SNUR is listed on the TSCA Inventory.

V. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require developing any particular test data before submission of a SNUN. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. In cases where a TSCA section 5(e) consent order requires or recommends certain testing, Unit III. lists those recommended tests.

However, EPA has established production limits in the TSCA section 5(e) consent orders for several of the substances regulated under this rule, in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the substances. These production limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these substances. Under recent consent orders, each PMN submitter is required to submit each study at least 14 weeks before reaching the specified production limit (earlier consent orders required submissions at least 12 weeks before). Listings of the tests specified in the TSCA section 5(e) consent orders are included in Unit III. The SNURs contain the same production volume limits as the consent orders. Exceeding these production limits is defined as a significant new use.

The recommended studies may not be the only means of addressing the potential risks of the substance. However, SNUNs submitted for significant new uses without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on:

1. Human exposure and environmental release that may result from the significant new use of the chemical substances.
2. Potential benefits of the substances.
3. Information on risks posed by the substances compared to risks posed by potential substitutes.

VI. Procedural Determinations

EPA is establishing through this rule some significant new uses which have been claimed as Confidential Business Information (CBI) subject to Agency confidentiality regulations at 40 CFR part 2. EPA is required to keep this information confidential to protect the CBI of the original PMN submitter. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This procedure appears in 40 CFR 721.1725(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the substance

subject to a SNUR is CBI. This procedure is cross-referenced in each of these SNURs.

A manufacturer or importer may request EPA to determine whether a proposed use would be a significant new use under this rule. Under the procedure incorporated from § 721.1725(b)(1), a manufacturer or importer must show that it has a *bona fide* intent to manufacture or import the substance and must identify the specific use for which it intends to manufacture or import the substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or import the substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.1725(b)(1) with that under § 721.11 into a single step.

If a manufacturer or importer is told that the production volume identified in the *bona fide* submission would not be a significant new use, i.e. it is below the level that would be a significant new use, that person can manufacture or import the substance as long as the aggregate amount does not exceed that identified in the *bona fide* submission to EPA. If the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use. EPA is considering whether to adopt a special procedure for use when CBI production volume is designated as a significant new use. Under such a procedure, a person showing a *bona fide* intent to manufacture or import the substance, under the procedure described in § 721.11, would automatically be informed of the production volume that would be a significant new use. Thus, the person would not have to make multiple *bona fide* submissions to EPA for the same substance to remain in compliance with the SNUR, as could be the case under the procedures in § 721.1725(b)(1).

VII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant ''new'' use, EPA must determine that the use is not already ongoing. The chemical substances subject to this rule underwent premanufacture notice review. TSCA section 5(e) consent orders were issued, and notice submitters are prohibited by the TSCA section 5(e) consent orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received an NOC and the substance has not been added to the Inventory, no other person may commence such activities without first submitting a PMN. For substances for which an NOC has not been submitted at this time, EPA has concluded that the uses are not currently ongoing. However, EPA recognizes in cases when chemical substances identified in this SNUR are added to the Inventory prior to the effective date of the rule, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule.

As discussed in the **Federal Register** of April 24, 1990, EPA has decided that the intent of section 5(a)(1)(B) of TSCA is best served by designating a use as a significant ''new'' use as of the first date of publication of the proposed SNUR in the **Federal Register**, rather than as of the effective date of the final rule. Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance under § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between the first date of publication of the proposed SNUR and the effective date of the final SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

VIII. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance subject to this rule. EPA's complete economic analysis is available in the official record for this rule (OPPTS–50606A).

IX. Regulatory Assessment Requirements

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that proposed or final SNURs are not a ''significant regulatory action'' subject to review by OMB, because they do not meet the criteria in section 3(f) of the Executive Order.

Based on EPA's experience with proposing and finalizing SNURs, State, local, and tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or tribal government will be impacted by this rulemaking. As such, EPA has determined that this regulatory action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This rule does not have tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This does not significantly or uniquely affect the communities of Indian tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 276755, May 19, 1998), do not apply to this rule. Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), which took effect on January 6, 2001, revokes Executive Order 13084 as of that date. EPA developed this rulemaking, however, during the period when Executive Order 13084 was in effect; thus, EPA addressed tribal considerations under Executive Order 13084. For the same reasons stated for Executive Order 13084, the requirements of Executive Order 10175 do not apply to this rule either. Nor will this action have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999).

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order.

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this SNUR will not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a ''significant new use.'' By definition of the word ''new,'' and based on all information currently available to EPA, it appears that no small or large entities presently engage in such activity. Since a SNUR only requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a Significant New Use Notice (SNUN), no economic impact will even occur until someone decides to engage in those activities. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of over 530 SNURs, the Agency has received fewer than 15 SNUNs. Of those SNUNs submitted, none appear to be from small entities in response to any SNUR. In addition, the estimated reporting cost for submission of a SNUN are minimal regardless of the size of the firm. Therefore, EPA believes that the potential economic impact of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published on June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented it's general determination that proposed and final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rule and in addition to its display on any related collection instrument, are listed in 40 CFR part 9.

The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a significant new use notice to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review and submit the required significant new use notice.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, OP Regulatory Information Division (2137), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

This rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

X. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 28, 2002.

William H. Sanders, III

Office Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.1230 to subpart E to read as follows:

§ 721.1230 Benzene, ethenyl-, ar-bromo derivatives.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as benzene, ethenyl-, ar-bromo derivatives (PMN P–84–660; CAS No. 125904–11–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this SNUR do not apply when the substance is present only in a mixture or in a polymer matrix, if the combined concentration of this substance and the substance identified in § 721.1240 as benzene, (2-bromoethyl)-, ar-bromo derivatives

(PMN P–84–704; CAS No. 125904–10–1), present as residual monomers in the mixture or polymer matrix, does not exceed 0.5% by weight or volume. This exemption does not apply if there is reason to believe that during intended use, processing, or other handling, these substances combined may be reconcentrated above the 0.5% level in the mixture or polymer matrix.

(2) The significant new uses are:

(i) *Protection in the workplace*. Requirements as specified in § 721.63 (a)(1) (including when the substance becomes airborne in any form), (a)(3), (a)(4) (when the substance becomes airborne in any form), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(5)(xv) and (c). As an alternative to the respiratory requirements listed here, a manufacturer, importer, or processor may choose to follow the NCEL provisions in the TSCA section 5(e) consent order for this substance.

(ii) *Hazard communication program*. Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(iii), (g)(1)(iv), (g)(1)(vi) (g)(1)(ix), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), (g)(4)(i), and (g)(5).

(iii) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80 (a), (b), (j) (flame retardant), and (l).

(iv) *Disposal*. It is a significant new use to dispose of the substance other than as follows:

(A) The following forms of the substance - the substance as a commercial chemical product or manufacturing chemical intermediate; the substance as an off-specification commercial chemical product or manufacturing chemical intermediate; the substance as a residue remaining in a container or in an inner liner removed from a container that has held the substance, unless the container is empty as defined in 40 CFR 261.7(b)(3); any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill into or on any land or water of the substance as a commercial chemical product or manufacturing chemical intermediate, or any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill into or on any land or water, of the substance as an off-specification commercial chemical product or manufacturing chemical intermediate; and any waste stream containing greater than 1.0% of this substance and the substance identified in § 721.1240 combined - shall be disposed of as follows: Requirements as specified in § 721.85 (a)(1), (b)(1), (c)(1), (a)(2), (b)(2), and (c)(2); the landfill shall be operated in accordance with Subtitle C of the Resource Conservation and Recovery Act.

(B) Any forms of the substance other than those described in paragraph (a)(2)(iv)(A) of this section, including waste streams containing 1.0% or less of this substance and the substance identified in § 721.1240, shall be disposed of as follows: § 721.85 (a)(1), (b)(1), (c)(1), (a)(2), (b)(2), (c)(2), (a)(3), (b)(3), (c)(3), carbon adsorption followed by either physical destruction, or as specified in § 721.90; the landfill shall be operated in accordance with the Resource Conservation and Recovery Act.

(v) *Release to water*. Requirements as specified in § 721.90 (a)(2)(iv), (b)(2)(iv), (c)(2)(iv), (a)(2)(v), (b)(2)(v), (c)(2)(v), (a)(3), (b)(3), and (c)(3).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125 (a) through (k).

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

3. By adding new § 721.1240 to subpart E to read as follows:

§ 721.1240 Benzene, (2-bromoethyl)-, ar-bromo derivatives.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as benzene, (2-bromoethyl)-, ar-bromo derivatives (PMN P–84–704; CAS No. 125904–10–1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this SNUR do not apply when the substance is present only in a mixture or in a polymer matrix, if the combined concentration of this substance and the substance identified in § 721.1230 as benzene, ethenyl-, ar-bromo derivatives (PMN P–84–660; CAS No.125904–11–2) present as residual monomers in the mixture or polymer matrix, does not exceed 0.5% by weight or volume. This exemption does not apply if there is reason to believe that during intended use, processing, or other handling, these substances combined may be reconcentrated above the 0.5% level in the mixture or polymer matrix.

(2) The significant new uses are:

(i) *Protection in the workplace*. Requirements as specified in § 721.63 (a)(1) (including when the substance becomes airborne in any form), (a)(3), (a)(4) (when the substance becomes airborne in any form), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(5)(xv), and (c). As an alternative to the respiratory requirements listed here, a manufacturer, importer, or processor may choose to follow the NCEL provisions in the TSCA section 5(e) consent order for this substance.

(ii) *Hazard communication program*. Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(iii), (g)(1)(iv), (g)(1)(vi) (g)(1)(ix), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), (g)(4)(i), and (g)(5).

(iii) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80 (a), (b), (c), (h) (in the manufacture of the substance identified in § 721.1230), and (l).

(iv) *Disposal*. It is a significant new use to dispose of the substance other than as follows:

(A) The following forms of the substance - the substance as a commercial chemical product or manufacturing chemical intermediate; the substance as an off-specification commercial chemical product or manufacturing chemical intermediate; the substance as a residue remaining in a container or in an inner liner removed from a container that has held the substance, unless the container is empty as defined in 40 CFR 261.7(b)(3); any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill into or on any land or water of the substance as a commercial chemical product or manufacturing chemical intermediate, or any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill into or on any land or water, of the substance as an off-specification commercial chemical product or manufacturing chemical intermediate; and any waste stream containing greater than 1.0% of this substance and the substance identified in § 721.1230 combined - shall be disposed of as follows: Requirements as specified in § 721.85 (a)(1), (b)(1), (c)(1), (a)(2), (b)(2), and (c)(2); the landfill shall be operated in accordance with Subtitle C of the Resource Conservation and Recovery Act.

(B) Any forms of the substance other than those described in paragraph (a)(2)(iv)(A) of this section, including waste streams containing 1.0% or less of this substance and the substance identified in § 721.1240, shall be disposed of as follows: § 721.85 (a)(1), (b)(1), (c)(1), (a)(2), (b)(2), (c)(2), (a)(3), (b)(3), (c)(3), carbon adsorption followed by either physical destruction, or as specified in § 721.90; the landfill shall be operated in accordance with the

Resource Conservation and Recovery Act.

(v) *Release to water*. Requirements as specified in § 721.90 (a)(2)(iv), (b)(2)(iv), (c)(2)(iv), (a)(2)(v), (b)(2)(v), (c)(2)(v),(a)(3), (b)(3), and (c)(3).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125 (a) through (k).

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

4. By adding new § 721.3780 to subpart E to read as follows:

§ 721.3780 Substituted and disubstituted tetrafluoro alkenes (generic).

(a) *Chemical substances and significant new uses subject to reporting*. (1) The chemical substance identified generically as substituted and disubstituted tetrafluoro alkene (PMN P–84–105) is subject to reporting under this section for the significant new uses described in paragraph (a)(1)(i) of this section.

(i) The significant new uses are:

(A) *Protection in the workplace*. Requirements as specified in § 721.63 (a)(1), (a)(3), (a)(4), (a)(5)(i), (a)(6)(v), (a)(6)(vi), (b) (concentration set at 1%), and (c).

(B) *Hazard communication program*. Requirements as specified in § 721.72 (a), (b)(2), (d), (e) (concentration set at 1%), (f), (g)(1)(i), (g)(1)(iv), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), and (g)(2)(v). In addition, the precautionary statements described under § 721.72(g) shall include: This substance may cause eye irritation.

(C) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(g).

(ii) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(A) *Recordkeeping*. The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125 (a) through (g) and (i).

(B) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

(2) The chemical substance identified generically as disubstituted tetrafluoro alkene (PMN P–84–106) is subject to reporting under this section for the significant new uses described in paragraph (a)(2)(i) of this section.

(i) The significant new uses are:

(A) *Protection in the workplace*. Requirements as specified in § 721.63 (a)(1), (a)(3), (a)(4), (a)(5)(i), (a)(6)(v), (a)(6)(vi), (b) (concentration set at 1%), and (c).

(B) *Hazard communication program*. Requirements as specified in § 721.72 (a), (b)(2), (d), (e) (concentration set at 1%), (f), (g)(1)(i), (g)(1)(iv), (g)(1)(v), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), and (g)(2)(v). In addition, the precautionary statements described under § 721.72(g) shall include: This substance may cause eye irritation.

(C) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(g).

(ii) *Specific requirements*. The provisions of Subpart A of this part apply to this section except as modified by this paragraph.

(A) *Recordkeeping*. The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125 (a) through (g) and (i).

(B) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

(3) The chemical substance identified generically as disubstituted tetrafluoro alkene (PMN P–84–107) is subject to reporting under this section for the significant new uses described in paragraph (a)(3)(i) of this section.

(i) The significant new uses are:

(A) *Protection in the workplace*. Requirements as specified in § 721.63 (a)(1), (a)(3), (a)(4), (a)(5)(i), (a)(6)(v), (a)(6)(vi), (b) (concentration set at 1%), and (c).

(B) *Hazard communication program*. Requirements as specified in § 721.72 (a), (b)(2), (d), (e) (concentration set at 1%), (f), (g)(1)(iv), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), and (g)(2)(v). In addition, the precautionary statements described under § 721.72(g) shall include: This substance may cause eye irritation.

(C) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(g).

(ii) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(A) *Recordkeeping*. The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125 (a) through (g) and (i).

(B) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

5. By adding new § 721.8175 to subpart E to read as follows:

§ 721.8175 1-Propanol, 3-mercapto-.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as 1-propanol, 3-mercapto (PMN P–85–433; CAS No. 19721–22–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace*. Requirements as specified in § 721.63 (a)(1), (a)(3), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(v), (b) (concentration set at 1%), and (c).

(ii) *Hazard communication program*. Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 1%), (f), (g)(1)(ix), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(g).

(iv) *Disposal*. Requirements as specified in § 721.85 (a)(1), (a)(2), (a)(3), (b)(1), (b)(2), (b)(3), (c)(1), (c)(2), and (c)(3). In addition, a method of disposal described in § 721.85 (a), (b), and (c) shall include: Release to an evaporation pond.

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance as specified in § 721.125 (a) through (j).

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

[FR Doc. 02–8828 Filed 4–10–02; 8:45 am]

BILLING CODE 6560–50–S

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–25

[FPMR Amendment E–279]

RIN 3090–AH58

Federal Property Management Regulations; General Policies

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the general policies portion of the Federal Property Management Regulations

(FPMR) by removing those provisions requiring that promotional benefits, including frequent flyer miles, earned on official travel are the property of the Government. On December 28, 2001, The President signed into law a provision that Federal employees may retain such promotional items for personal use.

EFFECTIVE DATE: This final rule is effective April 11, 2002.

FOR FURTHER INFORMATON CONTACT: Henry Maury, Office of Governmentwide Policy, telephone (202) 208–7928.

SUPPLEMENTARY INFORMATION:

A. Background

The changes in this final rule clarify an existing section of subpart 101–25.1 of the FPMR by removing the requirement that promotional items, including frequent flyer miles, earned on official travel belong to the Government. The law that prohibited employees from retaining promotional items, including frequent flyer miles, Section 6008 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355), has been repealed by the National Defense Authorization Act (Public Law 107–107)for Fiscal Year 2002. This final rule removes the requirement that frequent traveler benefits earned through official travel belong to the Government, and permits such benefits to be retained by the employee for personal use.

B. Executive Order 12886

GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 101–25

Government property management.

For the reasons set out in the preamble, 41 CFR part 101–25 is amended as follows:

PART 101–25—GENERAL

1. The authority citation for 41 CFR part 101–25 continues to read as follows:

Authority: Sec 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 101–25.103–2 [Removed and Reserved]

2. Section 101–25.103–2 is removed and reserved.

Dated: April 1, 2002.

Stephen A. Perry,

Administrator of General Services.

[FR Doc. 02–8755 Filed 4–10–02; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 68c

RIN 0925–AA19

National Institutes of Health Contraception and Infertility Research Loan Repayment Program

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Final rule.

SUMMARY: The National Institutes of Health (NIH) through the Center for Population Research of the National Institute of Child Health and Human Development (NICHD) is issuing regulations to implement provisions of the Public Health Service (PHS) Act authorizing the NICHD Contraception and Infertility Research Loan Repayment Program (CIR–LRP). The purpose of the CIR–LRP is the recruitment and retention of highly qualified health professionals conducting contraception and/or infertility research.

EFFECTIVE DATE: This final rule is effective on May 13, 2002.

FOR FURTHER INFORMATION CONTACT: Jerry Moore, NIH Regulations Officer, Office of Management Assessment, NIH, 6011 Executive Blvd., Room 601, MSC 7669, Rockville, MD 20852, telephone 301–496–4607 (not a toll-free number). For program information contact Dr. Louis V. De Paolo, NICHD Contraception and Infertility Research Loan Repayment Program, Center for Population Research, National Institute of Child Health and Human Development, NIH, Building 61E, Room 8B01, Bethesda, Maryland 20892–7510; telephone 301–435–6970 (not a toll-free number); FAX 301–480–2389; e-mail *(ld38p@nih.gov).*

SUPPLEMENTARY INFORMATION: The NIH Revitalization Act of 1993 (Pub. L. 103–43) was enacted on June 10, 1993, adding section 487B of the Public Health Service (PHS) Act, 42 U.S.C. 288–2. Section 410(b) of Public Law 105–392, the Health Professions Education Partnership Act of 1998, amended section 487B of the PHS Act to increase the maximum annual loan repayment from $20,000 to $35,000. Section 487B, as amended, authorizes the Secretary of Health and Human Services to establish a program of entering into contracts with qualified health professionals under which such professionals agree to conduct contraception and/or infertility research in consideration of the Federal Government agreeing to repay, for each year of such service, not more than $35,000 of the principal and interest of their outstanding graduate and/or undergraduate educational loans.

The Secretary, in consultation with the Director of NICHD, has established the NICHD Contraception and Infertility Research Loan Repayment Program (CIR–LRP) to implement this statutory authority. In return for loan repayments, applicants must agree to participate in contraception and/or infertility research for a period of obligated service of not less than two years. Selected applicants become participants in the CIR–LRP only upon the signing of a written contract by the Director, NICHD. We are amending title 42 of the Code of Federal Regulations by adding a new Part 68c to govern the administration of this loan repayment program. We proposed this action in a notice of proposed rulemaking (NPRM) published in the **Federal Register**, December 10, 1999 (64 FR 69213). The NPRM provided for a 60-day comment period. The comment period expired February 8, 2000. We received no comments. Consequently, except for minor editorial changes, the final regulations described below are the same as those proposed in December 1999.

The rule specifies the scope and purpose of the program, who is eligible to apply, how individuals apply to participate in the program, how participants are selected, and the terms and conditions of the program.

We provide the following as public information.

Executive Order 12866

Executive Order 12866 requires that all regulatory actions reflect consideration of the costs and benefits

they generate, and that they meet certain standards, such as avoiding the imposition of unnecessary burdens on the affected public. If a regulatory action is deemed to fall within the scope of the definition of the term ''significant regulatory action'' contained in § 3(f) of the Order, pre-publication review by the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) is necessary. This rule was reviewed under Executive Order 12866 by OIRA and was deemed to be significant. Therefore it has been reviewed by OMB prior to publication.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. chapter 6) requires that regulatory actions be analyzed to determine whether they create a significant impact on a substantial number of small entities. The Secretary certifies that this rule will not have any such impact.

Executive Order 13132

Executive Order 13132, Federalism, requires that federal agencies consult with State and local government officials in the development of regulatory policies with federalism implications. We have reviewed the rule as required under the Order and determined that it does not have any federalism implications. The Secretary certifies that this rule will not have an effect on the States, or on the distribution of power and responsibilities among the various levels of government.

Paperwork Reduction Act

The application forms for use by the NICHD Contraception and Infertility Loan Repayment Program have been approved by OMB under OMB Approval No. 0925–0440 (expires December 31, 2002). This rule does not contain any other information collection requirements which are subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) numbered program affected by the regulation is: 93.209—NICHD Contraception and Infertility Research Loan Repayment Program.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act requires that agencies prepare an assessment of anticipated costs and benefits before promulgating any final rule that may result in the expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation). Because the rule does not impose any mandates on State, local, or tribal governments, the agency finds that this is not a significant regulatory action under the Unfunded Mandates Reform Act.

List of Subjects in 42 CFR Part 68c

Health professions, Loan programs—health, Medical research, Reporting and recordkeeping requirements.

Dated: September 19, 2001.

Ruth L. Kirschstein,

Acting Director, National Institutes of Health.

Approved: December 31, 2001.

Tommy G. Thompson,

Secretary of Health and Human Services.

For the reasons presented in the preamble, we amend chapter I of title 42 of the Code of Federal Regulations by adding a new Part 68c to subchapter E to read as follows:

PART 68c—NATIONAL INSTITUTE OF CHILD HEALTH AND HUMAN DEVELOPMENT CONTRACEPTION AND INFERTILITY RESEARCH LOAN REPAYMENT PROGRAM

Sec.

68c.1 What is the scope and purpose of the National Institute of Child Health and Human Development (NICHD) Contraception and Infertility Research Loan Repayment Program (CIR–LRP)?
68c.2 Definitions.
68c.3 Who is eligible to apply?
68c.4 Who is eligible to participate?
68c.5 Who is ineligible to participate?
68c.6 How do individuals apply to participate in the CIR–LRP?
68c.7 How are applicants selected to participate in the CIR–LRP?
68c.8 What does the CIR–LRP provide to participants?
68c.9 What loans qualify for repayment?
68c.10 What does an individual have to do in return for loan repayments received under the CIR–LRP?
68c.11 How does an individual receive loan repayments beyond the initial two-year contract?
68c.12 What will happen if an individual does not comply with the terms and conditions of participation in the CIR–LRP?
68c.13 Under what circumstances can the service or payment obligation be canceled, waived, or suspended?
68c.14 When can a CIR–LRP payment obligation be discharged in bankruptcy?
68c.15 Additional conditions.
68c.16 What other regulations and statutes apply?

Authority: 42 U.S.C. 288–2.

§ 68c.1 What is the scope and purpose of the National Institute of Child Health and Human Development (NICHD) Contraception and Infertility Research Loan Repayment Program (CIR–LRP)?

This part applies to the award of educational loan payments under the National Institute of Child Health and Human Development (NICHD) Contraception and Infertility Research Loan Repayment Program (CIR–LRP) authorized by section 487B of the Public Health Service Act (42 U.S.C. 288–2). The purpose of this CIR–LRP is the recruitment and retention of highly qualified health professionals to conduct contraception and/or infertility research.

§ 68c.2 Definitions.

As used in this part:

Act means the Public Health Service Act, as amended (42 U.S.C. 201 *et seq.*).

Allied health professional means:

(1) A physician assistant; or

(2) A research assistant with at least a bachelor's degree and applicable career goals.

Applicant means an individual who applies to, and meets the eligibility criteria for the CIR–LRP.

Commercial loans means loans made by banks, credit unions, savings and loan associations, not-for-profit organizations, insurance companies, schools, and other financial or credit institutions which are subject to examination and supervision in their capacity as lending institutions by an agency of the United States or of the State in which the lender has its principal place of business.

Contraception and Infertility Research Loan Repayment Program (CIR–LRP or *Program)* means the NICHD Contraception and Infertility Research Loan Repayment Program authorized by section 487B of the Act.

Contraception and Infertility Research Loan Repayment Program (CIR–LRP or *Program) contract* refers to the agreement, which is signed by an applicant and the Secretary, wherein the applicant agrees to participate in research on infertility or contraceptive development and the Secretary agrees to repay qualified educational loans for a prescribed period as specified in this part.

Contraception and Infertility Research Loan Repayment Program (CIR–LRP or *Program) Panel* means a board assembled to review, rank, and approve or disapprove CIR–LRP applications. The Panel is composed of the Deputy Director, NICHD, representatives of NICHD's Office of Administrative Management, respective Program Officers of the Center for Population

Research, and other special consultants as required.

Contraceptive development means research whose ultimate goal is to provide new or improved means of preventing pregnancy.

Educational expenses means the cost of the health professional's education, including the tuition expenses and other educational expenses such as fees, books, supplies, educational equipment and materials, and laboratory expenses.

Government loans means loans made by Federal, State, county, or city agencies which are authorized by law to make such loans.

Health professional means an individual who is a physician, Ph.D-level scientist, nurse, or a graduate student or postgraduate research fellow working toward a degree that will enable them to practice in one of those professions.

Infertility research means research whose long-range objective is to evaluate, treat or ameliorate conditions which result in the failure of couples to either conceive or bear young.

Living expenses means the reasonable cost of room and board, transportation and commuting costs, and other reasonable costs incurred during an individual's attendance at an educational institution.

Eligible NICHD-supported extramural site means a site funded by NICHD that can be identified as one of the following:

(1) A Cooperative Specialized Contraception and Infertility Research Center;

(2) A Cooperative Specialized Research Center in Reproduction Research;

(3) A Women's Reproductive Health Research Career Development Center; and

(4) Reproductive Medicine Unit identified as a clinical site for the National Cooperative Reproductive Medicine Network, or other sites as designated by the Director.

NICHD intramural laboratory means a laboratory that is supported by the NICHD intramural research program.

Panel means the NICHD Contraception and Infertility Research Loan Repayment Program Panel.

Participant means an individual whose application to the CIR–LRP has been approved and whose Program contract has been executed by the Secretary.

Qualified educational loans include Government and commercial educational loans, interest and related expenses for—

(1) Undergraduate, graduate, and health professional school tuition expenses;

(2) Other reasonable educational expenses required by the school(s) attended, including fees, books, supplies, educational equipment and materials, and laboratory expenses; and

(3) Reasonable living expenses, including the cost of room and board, transportation and commuting costs, and other reasonable living expenses incurred.

Reasonable educational and living expenses means those educational and living expenses which are equal to or less than the sum of the school's estimated standard student budget for educational and living expenses for the degree program and for the year(s) during which the participant was enrolled in school. If there is no standard budget available from the school or if the participant requests repayment for educational and living expenses which exceed the standard student budget, reasonableness of educational and living expenses incurred must be substantiated by additional contemporaneous documentation, as determined by the Secretary.

Research on infertility or contraceptive development means activities which qualify for participation in the CIR–LRP as determined by the Program Panel.

School means undergraduate, graduate, and health professions schools which are accredited by a body or bodies recognized for accreditation purposes by the Secretary of Education.

Secretary means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

Service means the Public Health Service.

State means one of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the U.S. Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands (the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).

Withdrawal means an individual's cessation of participation in the Program pursuant to a request by that participant that is implemented by the Secretary prior to the Program making payments on the participant's behalf. A withdrawal is without penalty to the participant and without obligation to the Program.

§ 68c.3 Who is eligible to apply?

To be eligible to apply to the CIR–LRP, an individual must be a qualified health or allied health professional who is at the time of application, or will be at the time of inception into the CIR–LRP, engaged in employment/training at an NICHD intramural laboratory or an eligible NICHD-supported extramural site.

§ 68c.4 Who is eligible to participate?

To be eligible to participate in the CIR–LRP, the applicant must have institutional assurance of employment/affiliation with the NICHD intramural laboratory or eligible NICHD-supported extramural site and approval of the CIR–LRP Panel, must meet the criteria specified in § 68c.3, and not be ineligible to participate under § 68c.5.

§ 68c.5 Who is ineligible to participate?

The following individuals are ineligible for CIR–LRP participation:

(a) Persons who are not eligible applicants as specified under § 68c.3;

(b) Persons who owe an obligation of health professional service to the Federal Government, a State, or other entity. The following are examples of programs which have a service obligation: Physicians Shortage Area Scholarship Program, National Research Service Award Program, Public Health Service Scholarship, National Health Service Corps Scholarship Program, Armed Forces (Army, Navy, or Air Force) Professions Scholarship Program, Indian Health Service Scholarship Program, National Health Service Corp Loan Repayment Program, and NIH loan repayment programs.

§ 68c.6 How do individuals apply to participate in the CIR–LRP?

An application for participation in the CIR–LRP shall be submitted to the Center for Population Research, NICHD, NIH, which is responsible for the Program's administration, in such form and manner as the Secretary may prescribe.

§ 68c.7 How are applicants selected to participate in the CIR–LRP?

To be selected for participation in the CIR–LRP, applicants must satisfy the following requirements:

(a) Applicants must meet the eligibility requirements specified in § 68c.3 and § 68c.4.

(b) Applicants must not be ineligible for participation as specified in § 68c.5.

(c) Applicants must propose repayment of a loan that meets the requirements of § 68c.9.

(d) Applicants must be selected for approval by the CIR–LRP Panel based upon a review of their applications.

§ 68c.8 What does the CIR–LRP provide to participants?

(a) *Loan repayments.* Upon receipt of an individual's written commitment to serve a minimum initial period of two years of obligated service in accordance with this part, the Secretary may pay up to $35,000 per year of a participant's repayable debt for each year the individual serves.

(b) Under paragraph (a) of this section, the Secretary will make payments in the discharge of debt to the extent appropriated funds are available for that purpose. When a shortage of funds exists, participants may be funded partially, as determined by the Secretary. However, once a CIR–LRP contract has been signed by both parties, the Secretary will obligate such funds as necessary to ensure that sufficient funds will be available to pay benefits for the duration of the period of obligated service unless otherwise specified by mutual written agreement between the Secretary and the applicant. Benefits will be paid on a quarterly basis after each service period unless otherwise specified by mutual written agreement between the Secretary and the applicant.

§ 68c.9 What loans qualify for repayment?

(a) The CIR–LRP will repay participants' lenders the principal, interest, and related expenses of qualified Government and commercial educational loans obtained by participants for the following:

(1) Undergraduate, graduate, and health professional school tuition expenses;

(2) Other reasonable educational expenses required by the school(s) attended, including fees, books, supplies, educational equipment and materials, and laboratory expenses; and

(3) Reasonable living expenses, including the cost of room and board, transportation and commuting costs, and other living expenses as determined by the Secretary.

(b) The following educational loans are ineligible for repayment under the CIR–LRP:

(1) Loans obtained from other than a government entity or commercial lending institution;

(2) Loans for which contemporaneous documentation is not available;

(3) Loans or portions of loans obtained for educational or living expenses which exceed the standard of reasonableness as determined by the participant's standard school budget for the year in which the loan was made, and are not determined by the Secretary to be reasonable based on additional documentation provided by the individual;

(4) Loans, financial debts, or service obligations incurred under the following programs: Physicians Shortage Area Scholarship Program (Federal or State), National Research Service Award Program, Public Health and National Health Service Corps Scholarship Training Program, National Health Service Corps Scholarship Program, Armed Forces (Army, Navy, or Air Force) Health Professions Scholarship Program, Indian Health Service Program, and similar programs, upon determination by the Secretary, which provide loans, scholarships, loan repayments, or other awards in exchange for a future service obligation;

(5) Any loan in default or not in a current payment status;

(6) Loan amounts which participants have paid or were due for payment prior to inception into the CIR–LRP; and

(7) Loans for which promissory notes have been signed after the individual's acceptance into the CIR–LRP.

§ 68c.10 What does an individual have to do in return for loan repayments received under the CIR–LRP?

Individuals must make a written commitment in accordance with this part to conduct, and must actually conduct research with respect to contraception and/or infertility at an NICHD intramural laboratory or an eligible NICHD-supported extramural site for a minimum initial period of two years.

§ 68c.11 How does an individual receive loan repayments beyond the initial two-year contract?

An individual may apply for and the Secretary may grant extension contracts for one-year periods, if there is sufficient debt remaining to be repaid and the individual is engaged in research on infertility or contraceptive development at an NICHD intramural laboratory or eligible NICHD-supported extramural site.

§ 68c.12 What will happen if an individual does not comply with the terms and conditions of participation in the CIR–LRP?

(a) Absent withdrawal (see § 68c.2) or termination under paragraph (d) of this section, any participant who fails to begin or complete the minimum two-year service obligation required under the Program contract, will be considered to have breached the contract and will be subject to assessment of monetary damages and penalties as follows:

(1) Participants who leave during the first year of the initial contract are liable for amounts already paid by the CIR–LRP on behalf of the participant plus an amount equal to $1,000 multiplied by the number of months of the original two-year service obligation.

(2) Participants who leave during the second year of the contract are liable for amounts already paid by the NICHD on behalf of the participant plus $1,000 for each unserved month.

(b) Participants who sign a continuation contract for any year beyond the initial two-year period and fail to complete the one-year period specified are liable for the pro rata amount of any benefits advanced beyond the period of completed service plus an amount equal to the number of months of obligated service that were not completed by the participant multiplied by $1,000.

(c) Payments of any amount owed under paragraph (a) or (b) of this section shall be made within one year of the participant's breach (or such longer period as determined by the Secretary).

(d) Terminations will not be considered a breach of contract in cases where such terminations are beyond the control of the participant as follows:

(1) Terminations for cause or for convenience of the Government that are not based upon a breach or default of the participant will not be considered a breach of contract and monetary damages will not be assessed.

(2) The participant transfers to another NICHD intramural laboratory or eligible NICHD-supported extramural site, in which case the participant remains bound to any and all obligations of the contract.

(3) The participant transfers to a site other than an NICHD intramural laboratory or eligible NICHD-supported extramural site, in which case the participant may not be assessed monetary penalties if, in the judgement of the CIR–LRP Panel, the participant continues to engage in contraception and/or infertility research for any remaining period of obligated service as set forth in the contract.

§ 68c.13 Under what circumstances can the service or payment obligation be canceled, waived, or suspended?

(a) Any obligation of a participant for service or payment to the Federal Government under this part will be canceled upon the death of the participant.

(b)(1) The Secretary may waive or suspend any service or payment obligation incurred by the participant upon request whenever compliance by the participant:

(i) Is impossible;

(ii) Would involve extreme hardship to the participant; or

(iii) If enforcement of the service or payment obligation would be against equity and good conscience.

(2) The Secretary may approve a request for a suspension of the service or payment obligations for a period of 1 year. A renewal of this suspension may also be granted.

(c) Compliance by a participant with a service or payment obligation will be considered impossible if the Secretary determines, on the basis of information and documentation as may be required, that the participant suffers from a physical or mental disability resulting in the permanent inability of the participant to perform the service or other activities which would be necessary to comply with the obligation.

(d) In determining whether to waive or suspend any or all of the service or payment obligations of a participant as imposing an undue hardship and being against equity and good conscience, the Secretary, on the basis of information and documentation as may be required, will consider:

(1) The participant's present financial resources and obligations;

(2) The participant's estimated future financial resources and obligations; and

(3) The extent to which the participant has problems of a personal nature, such as a physical or mental disability or terminal illness in the immediate family, which so intrude on the participant's present and future ability to perform as to raise a presumption that the individual will be unable to perform the obligation incurred.

§ 68c.14 When can a CIR–LRP payment obligation be discharged in bankruptcy?

Any payment obligation incurred under § 68c.12 may be discharged in bankruptcy under Title 11 of the United States Code only if such discharge is granted after the expiration of the five-year period beginning on the first date that payment is required and only if the bankruptcy court finds that a nondischarge of the obligation would be unconscionable.

§ 68c.15 Additional conditions.

In order to protect or conserve Federal funds or to carry out the purposes of section 487B of the Act, or of this subpart, the Secretary may impose additional conditions as a condition of any approval, waiver or suspension authorized by this subpart.

§ 68c.16 What other regulations and statutes apply?

Several other regulations and statutes apply to this part. These include, but are not necessarily limited to:

Debt Collection Act of 1982, Public Law 97–365 (5 U.S.C. 5514);

Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*);

Federal Debt Collection Procedures Act of 1990, Public Law 101–647 (28 U.S.C. 1); and

Privacy Act of 1974 (5 U.S.C. 552a).

[FR Doc. 02–8592 Filed 4–10–02; 8:45 am]

BILLING CODE 4140–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment,* 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to permit FM Channel and Class Modifications [Upgrades] by Applications,* 8 FCC Rcd 4735 (1993).

DATES: Effective April 11, 2002.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted March 25, 2002, and released March 29, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC. 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR PART 73

Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 279C1 and adding Channel 279C2 at Ridgway.

3. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 264A and adding Channel 264C3 at Cuthbert.

4. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 232A and adding Channel 232C3 at Ozona.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Office of Broadcast License Policy, Media Bureau.

[FR Doc. 02–8796 Filed 4–10–02; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 67, No. 70
Thursday, April 11, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 213

Claims Collection

AGENCY: Agency for International Development (''USAID'').

ACTION: Proposed rule.

SUMMARY: USAID is proposing to revise its regulations on Claims Collection to incorporate applicable statutory and regulatory provisions and to make other changes.

DATES: Comments must be submitted on or before June 10, 2002.

ADDRESSES: Comments may be mailed to Ms. Sandra Malone-Gilmer, USAID/M/MPI, Room 2.10, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington , DC 20523. Comments may also be emailed to: *Smalone-Gilmer@USAID.GOV*

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Malone-Gilmer, 202–712–1089.

SUPPLEMENTARY INFORMATION:

A. Background

USAID proposes to amend its claim collection procedures to incorporate changes made to the Federal Claims Collection Standards and the Debt Collection Improvement Act of 1996. One principal change in the proposed rule is the provision for the mandatory referral of certain delinquent debt to the Federal Management Service of the Department of the Treasury. The proposed changes will maximize the effectiveness of USAID's claim collection procedures.

B. Regulatory Analysis

Executive Order 12866

USAID has determined that this regulation is not a significant regulatory action as defined in Executive Order 12866 and, accordingly, this regulation has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

Executive Order 13132

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

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic or export markets.

Executive Order 12988—Civil Justice Reform

USAID has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, this rule meets the applicable standards in section 3 to mitigate litigation, eliminate ambiguity and reduce burden.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

List of Subjects in 22 CFR Part 213

Administrative practice and procedure, Antitrust, Claims, Federal employees, Fraud, Penalties, Privacy.

Authority and Issuance

For the reasons set out in the preamble, it is proposed that part 213 of Title 22 be revised as follows:

PART 213—CLAIMS COLLECTION

Subpart A—General

Sec.
213.1 Purpose and scope.
213.2 Definitions.
213.3 Loans, guarantees, sovereign and interagency claims.
213.4 Other remedies.
213.5 Fraud claims.
213.6 Subdivision of claims not authorized.
213.7 Omission not a defense.

Subpart B—Collection

213.8 Collection—general.
213.9 Written notice.
213.10 Review requirements.
213.11 Aggressive collection actions; documentation.
213.12 Interest, penalty and administrative costs.
213.13 Interest and charges pending waiver or review.
213.14 Contracting for collection services.
213.15 Use of credit reporting bureaus.
213.16 Use and disclosure of mailing addresses.
213.17 Liquidation of collateral.
213.18 Suspension or revocation of eligibility for loans and loan guarantees, licenses or privileges.
213.19 Installment payments.

Subpart C—Administrative Offset

213.20 Administrative offset of non-employee debts.
213.21 Employee salary offset-general.
213.22 Salary offset when USAID is the creditor agency.
213.23 Salary offset when USAID is not the creditor agency.

Subpart D—Compromise of Debts

213.24 General.
213.25 Standards for compromise.
213.26 Payment of compromised claims.
213.27 Joint and several liability.
213.28 Execution of releases.

Subpart E—Suspension and Termination of Collection Action

213.29 Suspension-general.
213.30 Standards for suspension.
213.31 Termination-general.

213.32 Standards for termination.
213.33 Permitted action after termination of collection activity.
213.34 Debts that have been discharged in bankruptcy.

Subpart F—Discharge of Indebtedness and Reporting Requirements

213.35 Discharging indebtedness—general.
213.36 Reporting to IRS.

Subpart G—Referrals to the Department of Justice

213.37 Referrals to the Department of Justice.

Subpart H—Mandatory Transfer of Delinquent Debt to Financial Management Service (FMS) of the Department of Treasury

213.38 Mandatory transfer of debts to FMS—general.
213.39 Exceptions to mandatory transfer.

Authority: Section 621(a) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2381(a).

Subpart A—General

§ 213.1 Purpose and scope.

This part prescribes standards and procedures for the United States Agency for International Development's (USAID) collection and disposal of claims. These standards and procedures are applicable to all claims and debts for which a statute, regulation or contract does not prescribe different standards or procedures. This part covers USAID's collection, compromise, suspension, termination, and referral of claims to the Department of Justice.

§ 213.2 Definitions.

(a) *Administrative offset* means the withholding of money payable by the United States to, or held by the United States for, a person to satisfy a debt the person owes the Government.

(b) *Administrative Wage Garnishment* means the process by which federal agencies require a private sector employer to withhold up to 15% of an employee's disposable pay to satisfy a delinquent debt owed to the federal government. A court order is not required.

(c) *Agency* means the United States Agency for International Development (USAID).

(d) *Claim* means an amount of money, funds, or property that has been determined by an agency official to be due the United States from any person, organization, or entity, except another Federal agency. As used in this part, the terms debt and claim are synonymous.

(e) *CFO* means the Chief Financial Officer of USAID or a USAID employee or official designated to act on the CFO's behalf.

(f) *Creditor agency* means the Federal agency to which the debt is owed, including a debt collection center when acting on behalf of a creditor agency in matters pertaining to the collection of a debt.

(g) *Debtor* means an individual, organization, association, corporation, or a State or local government indebted to the United States or a person or entity with legal responsibility for assuming the debtor's obligation.

(h) *Delinquent claim* means any claim that has not been paid by the date specified in the agency's bill for collection or demand letter for payment or which has not been satisfied in accordance with a repayment agreement.

(i) *Disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld (other than deductions to execute garnishment orders) in accordance with 5 CFR parts 581 and 582. Among the legally required deductions that must be applied first to determine disposable pay are levies pursuant to the Internal Revenue Code (Title 26, United States Code) and deductions described in 5 CFR 581.105 (b) through (f). These deductions include, but are not limited to: Social security withholdings; Federal, State and local tax withholdings; health insurance premiums; retirement contributions; and life insurance premiums.

(j) *Employee* means a current employee of the Federal Government including a current member of the Armed Forces or a Reserve of the Armed Forces.

(k) *Employee Salary Offset* means the administrative collection of a debt by deductions at one or more officially established pay intervals from the current pay account of an employee without the employee's consent.

(l) *Person* means an individual, firm, partnership, corporation, association and, except for purposes of administrative offsets under subpart C and interest, penalty and administrative costs under subpart B of this part, includes State and local governments and Indian tribes and components of tribal governments.

(m) *Recoupment* is a special method for adjusting debts arising under the same transaction or occurrence. For example, obligations arising under the same contract generally are subject to recoupment.

(n) *Waiver* means the cancellation, remission, forgiveness or non-recovery of a debt or debt-related charge as permitted or required by law.

(o) *Withholding order* means any order for withholding or garnishment of pay issued by USAID or a judicial or administrative body. For the purposes of this part, wage garnishment order and garnishment order have the same meaning as withholding order.

§ 213.3 Loans, guarantees, sovereign and interagency claims.

This part does not apply to:

(a) Claims arising out of loans for which compromise and collection authority is conferred by section 635(g)(2) of the Foreign Assistance Act of 1961, as amended;

(b) Claims arising from investment guaranty operations for which settlement and arbitration authority is conferred by section 635(I) of the Foreign Assistance Act of 1961, as amended;

(c) Claims against any foreign country or any political subdivision thereof, or any public international organization;

(d) Claims where the CFO determines that the achievement of the purposes of the Foreign Assistance Act of 1961, as amended, or any other provision of law administered by USAID require a different course of action; and

(e) Claims owed USAID by other Federal agencies. Such debts will be resolved by negotiation between the agencies.

§ 213.4 Other remedies.

(a) This part does not supersede or require omission or duplication of administrative proceedings required by contract, statute, regulation or other Agency procedures, e.g., resolution of audit findings under grants or contracts, informal grant appeals, formal appeals, or review under a procurement contract.

(b) The remedies and sanctions available to the Agency under this part for collecting debts are not intended to be exclusive. The Agency may impose, where authorized, other appropriate sanctions upon a debtor for inexcusable, prolonged or repeated failure to pay a debt. For example, the Agency may stop doing business with a grantee, contractor, borrower or lender; convert the method of payment under a grant or contract from an advance payment to a reimbursement method; or revoke a grantee's or contractor's letter-of-credit.

§ 213.5 Fraud claims.

(a) The CFO will refer claims involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim to the USAID Office of Inspector General (OIG). The

OIG has the responsibility for investigating or referring the matter, where appropriate, to the Department of Justice (DOJ), and/or returning it to the CFO for further action.

(b) The CFO will not administratively compromise, terminate, suspend or otherwise dispose of debts involving fraud, the presentation of a false claim or misrepresentation on the part of the debtor or any party having an interest in the claim without the approval of DOJ.

§ 213.6 Subdivision of claims not authorized.

A claim will not be subdivided to avoid the $100,000 limit on the Agency's authority to compromise, suspend, or terminate a debt. A debtor's liability arising from a particular transaction or contract is a single claim.

§ 213.7 Omission not a defense.

Failure by USAID to comply with any provision of this part is not available to a debtor as a defense against payment of a debt.

Subpart B—Collection

§ 213.8 Collection—general.

(a) The CFO takes action to collect all debts owed the United States arising out of USAID activities and to reduce debt delinquencies. Collection actions may include sending written demands to the debtor's last known address. Written demand may be preceded by other appropriate action, including immediate referral to DOJ for litigation, when such action is necessary to protect the Government's interest. The CFO may contact the debtor by telephone, in person and/or in writing to demand prompt payment, to discuss the debtor's position regarding the existence, amount or repayment of the debt, to inform the debtor of its rights (e.g., to apply for waiver of the indebtedness or to have an administrative review) and of the basis for the debt and the consequences of nonpayment or delay in payment.

(b) The CFO maintains an administrative file for each debt and/or debtor which documents the basis for the debt, all administrative collection actions regarding the debt (including communications to and from the debtor) and its final disposition. Information on an individual may be disclosed only for purposes that are consistent with this part, the Privacy Act of 1974 and other applicable law.

§ 213.9 Written notice.

(a) When the billing official determines that a debt is owed USAID, he or she provides a written notice in the form of a Bill for Collection or demand letter to the debtor. Unless otherwise provided by agreement, contract or order, the written notice informs the debtor of:

(1) The amount, nature and basis of the debt;

(2) The right of the debtor to inspect and copy records related to the debt;

(3) The right of the debtor to discuss and propose a repayment agreement;

(4) Any rights available to the debtor to dispute the validity of the debt or to have recovery of the debt waived (citing the available review or waiver authority, the conditions for review or waiver, and the effects of the review or waiver request on the collection of the debt);

(5) The date on which payment is due which will be not more than 30 days from the date of the bill for collection or demand letter;

(6) The instructions for making electronic payment;

(7) The debt is considered delinquent if it is not paid on the due date;

(8) The imposition of interest charges and, except for State and local governments and Indian tribes, penalty charges and administrative costs that may be assessed against a delinquent debt;

(9) The intention of USAID to use non-centralized administrative offset to collect the debt if appropriate and, if not, the referral of the debt 90 days after the Bill for Collection or demand letter to the Financial Management Service in the Department of Treasury who will collect their administrative costs from the debtor in addition to the amount owed USAID and use all means available to the Federal Government for debt collection including administrative wage garnishment, use of collection agencies and reporting the indebtedness to a credit reporting bureau (see § 213.14);

(10) The address, telephone number, and name of the person available to discuss the debt;

(11) The possibility of referral to the Department of Justice for litigation if the debt cannot be collected administratively.

(b) USAID will respond promptly to communications from the debtor. Response generally will be within 30 days of receipt of communication from the debtor.

§ 213.10 Review requirements.

(a) For purposes of this section, whenever USAID is required to afford a debtor a review within the agency, USAID shall provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and the agency determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity.

(b) Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although USAID will carefully document all significant matters discussed at the hearing.

(c) This section does not require an oral hearing with respect to debt collection systems in which a determination of indebtedness rarely involves issues of credibility or veracity and the agency has determined that review of the written record is ordinarily an adequate means to correct prior mistakes.

(d) In those cases when an oral hearing is not required by this section, USAID shall accord the debtor a ''paper hearing,'' that is, a determination of the request for reconsideration based upon a review of the written record.

§ 213.11 Aggressive collection actions; documentation.

(a) USAID takes actions and effective follow-up on a timely basis to collect all claims of the United States for money and property arising out of USAID's activities. USAID cooperates with other Federal agencies in their debt collection activities.

(b) All administrative collection actions are documented in the claim file, and the basis for any compromise, termination or suspension of collection actions is set out in detail. This documentation, including the Claims Collection Litigation Report required in § 213.34, is retained in the appropriate debt file.

§ 213.12 Interest, penalty and administrative costs.

(a) *Interest.* USAID will assess interest on all delinquent debts unless prohibited by statute, regulation or contract.

(1) Interest begins to accrue on all debts from the payment due date established in the initial notice to the debtor. USAID will assess an annual rate of interest that is equal to the rate of the current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) unless a different rate is necessary to protect the interest of the Government. USAID will notify the debtor of the basis for its finding that a different rate is necessary to protect the interest of the Government.

(2) The rate of interest, as initially assessed, remains fixed for the duration of the indebtedness. If a debtor defaults

on a repayment agreement, interest may be set at the Treasury rate in effect on the date a new agreement is executed.

(3) Interest will not be assessed on interest charges, administrative costs or late payment penalties. However, where a debtor defaults on a previous repayment agreement and interest, administrative costs and penalties charges have been waived under the defaulted agreement, these charges can be reinstated and added to the debt principal under any new agreement and interest charged on the entire amount of the debt.

(b) *Administrative costs of collecting overdue debts.* The costs of the Agency's administrative handling of overdue debts including charges assessed by Treasury in cross-servicing USAID debts, based on either actual or average cost incurred, will be charged on all debts except those owed by State and local governments and Indian tribes. These costs include both direct and indirect costs.

(c) *Penalties.* As provided by 31 U.S.C. 3717(e)(2), a penalty charge will be assessed on all debts, except those owned by State and local governments and Indian tribes, more than 90 days delinquent. The penalty charge will be at a rate not to exceed 6% per annum and will be assessed monthly.

(d) *Allocation of payments.* A partial payment by a debtor will be applied first to outstanding administrative costs, second to penalty assessments, third to accrued interest and then to the outstanding debt principal.

(e) *Waivers.* (1) USAID will waive the collection of interest and administrative charges on the portion of the debt that is paid within 30 days after the date on which interest begins to accrue. The CFO may extend this 30-day period on a case-by-case basis where he determines that such action is in the best interest of the Government. A decision to extend or not to extend the payment period is final and is not subject to further review.

(2) The CFO may (without regard to the amount of the debt) waive collection of all or part of accrued interest, penalty or administrative costs, where he determines that—

(i) Waiver is justified under the criteria of § 213.24;

(ii) The debt or the charges resulted from the Agency's error, action or inaction, and without fault by the debtor; or

(iii) Collection of these charges would be against equity and good conscience or not in the best interest of the United States.

(3) A decision to waive interest, penalty charges or administrative costs may be made at any time.

§ 213.13 Interest and charges pending waiver or review.

Interest, penalty charges and administrative costs will continue to accrue on a debt during administrative appeal, either formal or informal, and during waiver consideration by the Agency; except, that interest, penalty charges and administrative costs will not be assessed where a statute or a regulation specifically prohibits collection of the debt during the period of the administrative appeal or the Agency review.

§ 213.14 Contracting for collection services.

USAID has entered into a cross-servicing agreement with the Financial Management Service (FMS) of the Department of Treasury. FMS is authorized to take all appropriate action to enforce collection of accounts referred to FMS in accordance with applicable statutory and regulatory requirements. The FMS fee ranges from 3% to 18% of the funds collected and will be collected from the debtor along with the original amount of the indebtedness. After referral, FMS will be solely responsible for the maintenance of the delinquent debtor records in its possessions and for ensuring that accounts are updated as necessary. In the event that a referred debtor disputes the validity of the debt or any terms and conditions related to any debt not reduced to judgment, FMS may return the disputed debt to USAID for its determination of debt validity. FMS may take any of the following collection actions on USAID's behalf:

(a) Send demand letters on U.S. Treasury letterhead and telephone debtors;

(b) Refer accounts to credit bureaus;

(c) Skiptracing;

(d) Purchase credit reports to assist in the collection effort;

(e) Refer accounts for offset, including tax refund, Federal employee salary, administrative wage garnishment, and general administrative offset under the Treasury Offset Program;

(f) Refer accounts to private collection agencies;

(g) Refer accounts to DOJ for litigation;

(h) Report written off/discharged debts to IRS on the appropriate Form 1099;

(i) Take any additional steps necessary to enforce recovery; and

(j) Terminate collection action, as appropriate.

§ 213.15 Use of credit reporting bureaus.

Delinquent debts owed to USAID are reported to appropriate credit reporting bureaus through the cross-servicing agreement with FMS.

(a) The following information is provided to the credit reporting bureaus:

(1) A statement that the claim is valid and is overdue;

(2) The name, address, taxpayer identification number and any other information necessary to establish the identity of the debtor;

(3) The amount, status and history of the debt; and

(4) The program or pertinent activity under which the debt arose.

(b) Before referring claims to FMS and disclosing debt information to credit reporting bureaus, USAID will have:

(1) Taken reasonable action to locate the debtor if a current address is not available; and

(2) If a current address is available, notified the debtor in writing that:

(i) The designated USAID official has reviewed the claim and has determined that it is valid and overdue;

(ii) That 90 days after the initial billing or demand letter if the debt is not paid, USAID intends to refer the debt to FMS and disclose to a credit reporting agency the information authorized for disclosure by this subpart; and

(iii) The debtor can request a complete explanation of the claim, can dispute the information in USAID's records concerning the claim, and can file for an administrative review, waiver or reconsideration of the claim, where applicable.

(c) Before information is submitted to a credit reporting bureau, USAID will provide a written statement to FMS that all required actions have been taken. Additionally, FMS will, thereafter, ensure that accounts are updated as necessary during the period that FMS holds the account information.

(d) If a debtor disputes the validity of the debt, the credit reporting bureau will refer the matter to the appropriate USAID official. The credit reporting bureau will exclude the debt from its reports until USAID certifies in writing that the debt is valid.

§ 213.16 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to collect or compromise a debt, the CFO may obtain a debtor's current mailing address from the Internal Revenue Service.

(b) Addresses obtained from the Internal Revenue Service will be used by the Agency, its officers, employees, agents or contractors and other Federal agencies only to collect or dispose of

debts, and may be disclosed to other agencies and to collection agencies only for collection purposes.

§ 213.17 Liquidation of collateral.

Where the CFO holds a security instrument with a power of sale or has physical possession of collateral, he may liquidate the security or collateral and apply the proceeds to the overdue debt. USAID will exercise this right where the debtor fails to pay within a reasonable time after demand, unless the cost of disposing of the collateral is disproportionate to its value or special circumstances require judicial foreclosure. However, collection from other businesses, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety or insurance company unless expressly required by contract or statute. The CFO will give the debtor reasonable notice of the sale and an accounting of any surplus proceeds and will comply with any other requirements of law or contract.

§ 213.18 Suspension or revocation of eligibility for loans and loan guarantees, licenses or privileges.

Unless waived by the CFO, USAID will not extend financial assistance in the form of a loan or loan guarantee to any person delinquent on a nontax debt owed to a Federal agency. USAID may also suspend or revoke licenses or other privileges for any inexcusable, prolonged or repeated failure of a debtor to pay a claim. Additionally, the CFO may suspend or disqualify any contractor, lender, broker, borrower, grantee or other debtor from doing business with USAID or engaging in programs USAID sponsors or funds if a debtor fails to pay its debts to the Government within a reasonable time. Debtors will be notified before such action is taken and applicable suspension or debarment procedures will be used. The CFO will report the failure of any surety to honor its obligations to the Treasury Department for action under 31 CFR 332.18.

§ 213.19 Installment payments.

(a) Whenever feasible, and except as otherwise provided by law, debts owed to the United States, together with interest, penalty and administrative costs, as required by § 213.11, will be collected in a single payment. However, where the CFO determines that a debtor is financially unable to pay the indebtedness in a single payment or that an alternative payment mechanism is in the best interest of the United States, the CFO may approve repayment of the debt in installments. The debtor has the burden of establishing that it is financially unable to pay the debt in a single payment or that an alternative payment mechanism is warranted. If the CFO agrees to accept payment by installments, the CFO may require a debtor to execute a written agreement which specifies all the terms of the repayment arrangement and which contains a provision accelerating the debt in the event of default. The size and frequency of installment payments will bear a reasonable relation to the size of the debt and the debtor's ability to pay. The installment payments will be sufficient in size and frequency to liquidate the debt in not more than 3 years, unless the CFO determines that a longer period is required. Installment payments of less than $50 per month generally will not be accepted, but may be accepted where the debtor's financial or other circumstances justify.

(b) If a debtor owes more than one debt and designates how a voluntary installment payment is to be applied among the debts, that designation will be approved if the CFO determines that the designation is in the best interest of the United States. If the debtor does not designate how the payment is to be applied, the CFO will apply the payment to the various debts in accordance with the best interest of the United States, paying special attention to applicable statutes of limitations.

Subpart C—Administrative Offset

§ 213.20 Administrative offset of non-employee debts.

This subpart provides for USAID's collection of debts by administrative offset under the Federal Claims Collection Standards, other statutory authorities and offsets or recoupments under common law. It does not apply to offsets against employee salaries covered by §§ 213.21, 213.22 and 213.23 of this subpart. USAID will collect debts by administrative offsets where it determines that such collections are feasible and are not otherwise prohibited by statute or contract. USAID will decide, on a case-by-case basis, whether collection by administrative offset is feasible and that its use furthers and protects the interest of the United States.

(a) *Standards.* (1) The CFO collects debts by administrative offset only after the debtor has been sent written notice in the form of a Bill for Collection or demand letter outlining the type and amount of the debt, the intention of the agency to use administrative offset to collect the debt, and explaining the debtor's rights under 31 U.S.C. 3716.

(2) Offsets may be initiated only after the debtor has been given:

(i) The opportunity to inspect and copy agency records related to the debt;

(ii) The opportunity for a review within the agency of the determination of indebtedness;

(iii) The opportunity to make a written agreement to repay the debt.

(3) The provisions of paragraphs (a)(1) and (2) of this section may be omitted when:

(i) The offset is in the nature of a recoupement;

(ii) The debt arises under a contract as set forth in *Cecile Industries, Inc.* v. *Cheney,* 995 F.2d 1052 (Fed. Cir. 1993) (notice and other procedural protections set forth in 31 U.S.C. 3716(a) do not supplant or restrict established procedures for contractual offsets accommodated by the Contracts Disputes Act); or

(iii) In the case of non-centralized administrative offsets conducted under paragraph (g) of this section, USAID firsts learns of the existence of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity for review. When prior notice and an opportunity for review are omitted, USAID shall give the debtor such notice and an opportunity for review as soon as practicable and shall promptly refund any money ultimately found not to have been owed to the USAID.

(4) When USAID previously has given a debtor any of the required notice and review opportunities with respect to a particular debt, USAID need not duplicate such notice and review opportunities before administrative offset may be initiated.

(b) *Interagency offset.* The CFO may offset a debt owed to another Federal agency from amounts due or payable by USAID to the debtor, or may request another Federal agency to offset a debt owed to USAID. The CFO through the FMS cross-servicing arrangement may request the Internal Revenue Service to offset an overdue debt from a Federal income tax refund due. The FMS may also garnishment the salary of a private sector employee where reasonable attempts to obtain payment have failed. Interagency offsets from employee's salaries will be made in accordance with the procedures contained in §§ 213.22 and 213.23.

(c) *Statutory bar to offset.* Administrative offset will not be made more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt

were not known and could not have been known through the exercise of reasonable care by the officer responsible for discovering or collecting the debt. For purposes of offset, the right to collect a debt accrues when the appropriate USAID official determines that a debt exists (e.g., contracting officer, grant award official, etc.), when it is affirmed by an administrative appeal or a court having jurisdiction, or when a debtor defaults on a payment agreement, whichever is latest. An offset occurs when money payable to the debtor is first withheld or when USAID requests offset from money held by another agency.

(d) *Alternative repayment.* The CFO may, at the CFO's discretion, enter into a repayment agreement with the debtor in lieu of offset. In deciding whether to accept payment of the debt by an alternative repayment agreement, the CFO may consider such factors as the amount of the debt, the length of the proposed repayment period, past Agency dealings with the debtor, documentation submitted by the debtor indicating that an offset will cause undue financial hardship, and the debtor's financial ability to adhere to the terms of a repayment agreement. The CFO may require financial documentation from the debtor before considering the repayment arrangement.

(e) *Review of administrative determination of debt's validity.* (1) A debt will not be offset while a debtor is seeking either formal or informal review of the validity of the debt under this section or under another statute, regulation or contract. However, interest, penalty and administrative costs will continue to accrue during this period, unless otherwise waived by the CFO. The CFO may initiate offset as soon as practical after completion of review or after a debtor waives the opportunity to request review.

(2) The debtor must provide a written request for review of the decision to offset the debt no later than 15 days after the date of the notice of the offset unless a different time is specifically prescribed. The debtor's request must state the basis for the request for review.

(3) The CFO may grant an extension of time for filing a request for review if the debtor shows good cause for the late filing. A debtor who fails timely to file or to request an extension waives the right to review.

(4) The CFO will issue, no later than 60 days after the filing of the request, a written final decision based on the evidence, record and applicable law.

(f) *Multiple debts.* Where moneys are available for offset against multiple debts of a debtor, it will be applied in accordance with the best interest of the Government as determined by the CFO on a case-by-case basis.

(g) *Non-centralized administrative offset.* (1) Generally, non-centralized administrative offsets are ad hoc case-by-case offsets that creditor agencies conduct, at the agency's discretion, internally or in cooperation with the agency certifying or authorizing payments to the debtor. Unless otherwise prohibited by law, when centralized administrative offset is not available or appropriate, past due, legally enforceable nontax delinquent debts may be collected through non-centralized administrative offset. In these cases, a creditor agency may make a request directly to a payment authorizing agency to offset a payment due a debtor to collect a delinquent debt.

(2) Before requesting a payment authorizing agency to conduct a non-centralized administrative offset, USAID's regulations provides that such offsets may occur only after:

(i) The debtor has been provided due process as set forth in paragraph (a) of this section; and

(ii) The payment authorizing agency has received written certification from the creditor agency that the debtor owes the past due, legally enforceable delinquent debt in the amount stated, and that the creditor agency has fully complied with its regulations concerning administrative offset.

(3) USAID as a payment authorizing agency will comply with offset requests by creditor agencies to collect debts owed to the United States, unless the offset would not be in the best interests of the United States with respect to USAID's program, or would otherwise be contrary to law.

(4) When collecting multiple debts by non-centralized administrative offset, USAID will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, particularly the applicable statute of limitations.

(h) Requests to OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund. Upon providing OPM written certification that a debtor has been afforded the procedures provided in paragraph (a) of this section, USAID may request OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) in accordance with regulations codified at 5 CFR 831.1801 through 831.1808. Upon receipt of such a request, OPM will identify and ''flag'' a debtor's account in anticipation of the time when the debtor requests, or becomes eligible to receive, payments from the Fund. This will satisfy any requirement that offset be initiated prior to the expiration of the time limitations referenced in paragraph (a)(4) of this section.

§ 213.21 Employee salary offset-general.

(a) *Purpose.* This section establishes USAID's policies and procedures for recovery of debts owed to the United States by installment collection from the current pay account of an employee.

(b) *Scope.* The provisions of this section apply to collection by salary offset under 5 U.S.C. 5514 of debts owed USAID and debts owed to other Federal agencies by USAID employees. USAID will make every effort reasonably and lawfully possible to administratively collect amounts owed by employees prior to initiating collection by salary offset. An amount advanced to an employee for per diem or mileage allowances in accordance with 5 U.S.C. 5705, but not used for allowable travel expenses, is recoverable from the employee by salary offset without regard to the due process provisions in § 213.22. This section does not apply to debts where collection by salary offset is explicitly provided for or prohibited by another statute.

(c) *References.* The following statutes and regulations apply to USAID's recovery of debts due the United States by salary offset:

(1) 5 U.S.C. 5514, as amended, governing the installment collection of debts;

(2) 31 U.S.C. 3716, governing the liquidation of debts by administrative offset;

(3) 5 CFR part 550, subpart K, setting forth the minimum requirements for executive agency regulations on salary offset; and

(4) 31 CFR parts 900 through 904, the Federal Claims Collection Standards.

§ 213.22 Salary offset when USAID is the creditor agency.

(a) *Due process requirements—Entitlement to notice, hearing, written response and decision.* (1) Prior to initiating collection action through salary offset, USAID will first provide the employee with the opportunity to pay in full the amount owed, unless such notification will compromise the Government's ultimate ability to collect the debt.

(2) Except as provided in paragraph (b) of this section, each employee from whom the Agency proposes to collect a debt by salary offset under this section

is entitled to receive a written notice as described in paragraph (c) of this section.

(3) Each employee owing a debt to the United States that will be collected by salary offset is entitled to request a hearing on the debt. This request must be filed as prescribed in paragraph (d) of this section. The Agency will make appropriate hearing arrangements that are consistent with law and regulations. Where a hearing is held, the employee is entitled to a written decision on the following issues:

(i) The determination of the Agency concerning the existence or amount of the debt; and

(ii) The repayment schedule, if it was not established by written agreement between the employee and the Agency.

(b) *Exceptions to due process requirements—pay and allowances.* The procedural requirements of paragraph (a) of this section are not applicable to overpayments of pay or allowances caused by the following:

(1) Any adjustment of pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program (such as health insurance) requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less. However, if the amount to be recovered was accumulated over more than four pay periods the full procedures prescribed under paragraph (d) of this section will be extended to the employee;

(2) Routine intra-agency adjustment in pay or allowances that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred with the 4 pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the employee is provided written notice of the nature and amount of the adjustment; or

(3) Any adjustment to collect a debt amounting to $50 or less, if at the time of such adjustment, or as soon thereafter as practical, the employee is provided written notice of the nature and amount of the adjustment.

(c) *Notification before deductions begin.* Except as provided in paragraph (b) of this section, deductions will not be made unless the employee is first provided with a minimum of 30 calendar days written notice. Notice will be sent by mail and must include the following:

(1) The Agency's determination that a debt is owed, including the origin, nature, and amount of the debt;

(2) The Agency's intention to collect the debt by means of deductions from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date and duration of the intended deductions. (The proposed beginning date for salary offset cannot be earlier than 30 days after the date of notice, unless this would compromise the Government's ultimate ability to resolve the debt);

(4) An explanation of the requirements concerning interest, penalty and administrative costs;

(5) The employee's right to inspect and copy all records relating to the debt or to request and receive a copy of such records;

(6) If not previously provided, the employee's right to enter into a written agreement for a repayment schedule differing from that proposed by the Agency where the terms of the proposed repayment schedule are acceptable to the Agency. (Such an agreement must be in writing and signed by both the employee and the appropriate USAID official and will be included in the debt file);

(7) The right to a hearing conducted by a hearing official not under the control of USAID, if a request is filed;

(8) The method and time for requesting a hearing;

(9) That the filing of a request for hearing within 15 days of receipt of the original notification will stay the assessment of interest, penalty and administrative costs and the commencement of collection proceedings;

(10) That a final decision on the hearing (if requested) will be issued at the earliest practical date, but no later than 60 days after the filing of the request, unless the employee requests and the hearing official grants a delay in the proceedings;

(11) That any knowingly false or frivolous statements, representations or evidence may subject the employee to-

(i) Disciplinary procedures under 5 U.S.C. chapter 75 or any other applicable statutes or regulations;

(ii) Criminal penalties under 18 U.S.C. 286, 287, 1001 and 1002 or other applicable statutory authority; or

(iii) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or any other applicable statutory authority;

(12) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are applicable contractual or statutory provisions to the contrary, amounts paid or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

(d) *Request for hearing.* An employee may request a hearing by filing a written, signed request directly with the Deputy Chief Financial Office, M/FM, United States Agency for International Development, Ronald Reagan Building, 1300 Pennsylvania Avenue NW., Washington, DC 20523–4601. The request must state the basis upon which the employee disputes the proposed collection of the debt. The request must be signed by the employee and be received by USAID within 15 days of the employee's receipt of the notification of proposed deductions. The employee should submit in writing all facts, evidence and witnesses that support his/her position to the Deputy Chief Financial Officer within 15 days of the date of the request for a hearing. The Deputy Chief Financial Officer will arrange for the services of a hearing official not under the control of USAID and will provide the hearing official with all documents relating to the claim.

(e) *Requests for hearing made after time expires.* Late requests for a hearing may be accepted if the employee can show that the delay in filing the request for a hearing was due to circumstances beyond the employee's control.

(f) *Form of hearing, written response and final decision.* (1) Normally, a hearing will consist of the hearing official making a decision based upon a review of the claims file and any materials submitted by the debtor. However, in instances where the hearing official determines that the validity of the debt turns on an issue of veracity or credibility which cannot be resolved through review of documentary evidence, the hearing official at his discretion may afford the debtor an opportunity for an oral hearing. Such oral hearings will consist of an informal conference before a hearing official in which the employee and the Agency will be given the opportunity to present evidence, witnesses and argument. If desired, the employee may be represented by an individual of his/her choice. The Agency shall maintain a summary record of oral hearings provided under the procedures in this section.

(2) Written decisions provided after a request for hearing will, at a minimum, state the facts evidencing the nature and origin of the alleged debt; and the hearing official's analysis, findings and conclusions.

(3) The decision of the hearing official is final and binding on the parties.

(g) *Request for waiver.* In certain instances, an employee may have a

statutory right to request a waiver of overpayment of pay or allowances, e.g., 5 U.S.C. 5584 or 5 U.S.C. 5724(i). When an employee requests waiver consideration under a right authorized by statute, further collection on the debt will be suspended until a final administrative decision is made on the waiver request. However, where it appears that the Government's ability to recover the debt may be adversely affected because of the employee's resignation, termination or other action, suspension of recovery is not required. During the period of the suspension, interest, penalty charges and administrative costs will not be assessed against the debt. The Agency will not duplicate, for purposes of salary offset, any of the procedures already provided the debtor under a request for waiver.

(h) *Method and source of collection.* A debt will be collected in a lump sum or by installment deductions at established pay intervals from an employee's current pay account, unless the employee and the Agency agree to alternative arrangements for payment. The alternative payment schedule must be in writing, signed by both the employee and the CFO and will be documented in the Agency's files.

(i) *Limitation on amount of deduction.* The size and frequency of installment deductions generally will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period may not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. If possible, the installment payments will be in amounts sufficient to liquidate the debt in three years or less. Installment payments of less than $50 normally will be accepted only in the most unusual circumstances.

(j) *Duration of deduction.* If the employee is financially unable to pay a debt in a lump sum or the amount of the debt exceeds 15 percent of disposable pay, collection will be made in installments. Installment deductions will be made over the period of active duty or employment except as provided in paragraph (a)(1) of this section.

(k) *When deductions may begin.* (1) Deductions to liquidate an employee's debt will begin on the date stated in the Agency's Bill for Collection or demand letter notice of intention to collect from the employee's current pay unless the debt has been repaid or the employee has filed a timely request for hearing on issues for which a hearing is appropriate.

(2) If the employee has filed a timely request for hearing with the Agency, deductions will begin after the hearing official has provided the employee with a final written decision indicating the amount owed the Government. Following the decision by the hearing official, the employee will be given 30 days to repay the amount owed prior to collection through salary offset, unless otherwise provided by the hearing official.

(l) *Liquidation from final check.* If the employee retires, resigns, or the period of employment ends before collection of the debt is completed, the remainder of the debt will be offset from subsequent payments of any nature due the employee (e.g., final salary payment, lump-sum leave, etc.).

(m) *Recovery from other payments due a separated employee.* If the debt cannot be liquidated by offset from any final payment due the employee on the date of separation, USAID will liquidate the debt, where appropriate, by administrative offset from later payments of any kind due the former employee (e.g., retirement pay). Such administrative offset will be taken in accordance with the procedures set forth in § 213.20.

(n) *Interest, penalty and administrative cost.* USAID will assess interest, penalties and administrative costs on debts collected under the procedures in this section. Interest, penalty and administrative costs will continue to accrue during the period that the debtor is seeking either formal or informal review of the debt or requesting a waiver. The following guidelines apply to the assessment of these costs on debts collected by salary offset:

(1) Interest will be assessed on all debts not collected by the payment due date specified in the bill for collection or demand letter. USAID will waive the collection of interest and administrative charges on the portion of the debt that is paid within 30 days after the date on which interest begins to accrue.

(2) Administrative costs will be assessed if the debt is referred to Treasury for cross-servicing.

(3) Deductions by administrative offset normally begin prior to the time for assessment of a penalty. Therefore, a penalty charge will not be assessed unless deductions occur more than 90 days from the due date in the bill for collection or demand letter.

(o) *Non-waiver of right by payment.* An employee's payment under protest of all or any portion of a debt does not waive any rights that the employee may have under either the procedures in this section or any other provision of law.

(p) *Refunds.* USAID will promptly refund to the employee amounts paid or deducted pursuant to this section, the recovery of which is subsequently waived or otherwise found not owing to the United States. Refunds do not bear interest unless specifically authorized by law.

(q) *Time limit for commencing recovery by salary setoff.* USAID will not initiate salary offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the right to collect the debt were not known and could not have been known through the exercise of reasonable care by the Government official responsible for discovering and collecting such debts.

§ 213.23 Salary offset when USAID is not the creditor agency.

(a) USAID will use salary offset against one of its employees that is indebted to another agency if requested to do so by that agency. Such a request must be accompanied by a certification by the requesting agency that the person owes the debt (including the amount) and that the procedural requirements of 5 U.S.C. 5514 and 5 CFR part 550, subpart K, have been met. The creditor agency must also advise USAID of the number of installments to be collected, the amount of each installment, and the commencement date of the first installment, if a date other than the next established pay period.

(b) Requests for salary offset must be sent to the Chief Financial Officer, Office of Financial Management (M/FM), United States Agency for International Development, Ronald Reagan Building , 1300 Pennsylvania Avenue NW., Washington, DC 20523–4601.

(c) *Processing of the claim by USAID.* (1) *Incomplete claims.* If USAID receives an improperly completed request, the requesting (creditor) agency will be requested to supply the required information before any salary offset can be taken.

(2) *Complete claims.* If the claim procedures in paragraph (a) of this section have been properly completed, deduction will begin on the next established pay period. USAID will not review the merits of the creditor agency's determinations with respect to the amount or validity of the debt as stated in the debt claim form. USAID will not assess a handling or any other related charge to cover the cost of its processing the claim.

(d) *Employees separating from USAID before a debt to another agency is collected.* (1) *Employees separating from Government service.* If an employee

begins separation action before USAID collects the total debt due the creditor agency, the following actions will be taken:

(i) To the extent possible, the balance owed the creditor agency will be liquidated from subsequent payments of any nature due the employee from USAID in accordance with § 213.22;

(ii) If the total amount of the debt cannot be recovered, USAID will certify to the creditor agency and the employee the total amount of USAID's collection; and

(iii) If USAID is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, the Foreign Service Retirement Fund, or other similar payments, it will provide such information to the creditor agency so that it can file a certified claim against the payments.

(2) *Employees who transfer to another Federal agency.* If an USAID employee transfers to another Federal agency before USAID collects the total amount due the creditor agency, USAID will certify the total amount of the collection made on the debt. It is the responsibility of the creditor agency to ensure that the collection is resumed by the new employing agency.

Subpart D—Compromise of Debts

§ 213.24 General.

USAID may compromise claims for money or property where the principal balance of a claim, exclusive of interest, penalty and administrative costs, does not exceed $100,000. Where the claim exceeds $100,000, the authority to accept the compromise rests solely with DOJ. The CFO may reject an offer of compromise in any amount. Where the claim exceeds $100,000 and USAID recommends acceptance of a compromise offer, it will refer the claim with its recommendation to DOJ for approval. The referral will be in the form of the Claims Collection Litigation Report (CCLR) and will outline the basis for USAID's recommendation. USAID refers compromise offers for claims in excess of $100,000 to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530, unless otherwise provided by Department of Justice delegations or procedures.

§ 213.25 Standards for compromise.

(a) USAID may compromise a claim pursuant to this section if USAID cannot collect the full amount because the debtor does not have the financial ability to pay the full amount of the debt within a reasonable time, or the debtor refuses to pay the claim in full and the Government does not have the ability to enforce collection in full within a reasonable time by enforced collection proceedings. In evaluating the acceptability of the offer, the CFO may consider, among other factors, the following:

(1) Age and health of the debtor;

(2) Present and potential income;

(3) Inheritance prospects;

(4) The possibility that assets have been concealed or improperly transferred by the debtor;

(5) The availability of assets or income which may be realized by enforced collection proceedings; or

(6) The applicable exemptions available to the debtor under State and Federal law in determining the Government's ability to enforce collection.

(b) USAID may compromise a claim, or recommend acceptance of a compromise to DOJ, where there is significant doubt concerning the Government's ability to prove its case in court for the full amount of the claim, either because of the legal issues involved or a bona fide dispute as to the facts. The amount accepted in compromise in such cases will fairly reflect the probability of prevailing on the legal issues involved, considering fully the availability of witnesses and other evidentiary data required to support the Government's claim. In determining the litigative risks involved, USAID will give proportionate weight to the likely amount of court costs and attorney fees the Government may incur if it is unsuccessful in litigation.

(c) USAID may compromise a claim, or recommend acceptance of a compromise to DOJ, if the cost of collection does not justify the enforced collection of the full amount of the debt. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, taking into consideration the time it will take to effect collection. Costs of collection may be a substantial factor in the settlement of small claims, but normally will not carry great weight in the settlement of large claims. In determining whether the cost of collection justifies enforced collection of the full amount, USAID may consider the positive effect that enforced collection of the claim may have on the collection of other similar claims.

(d) To assess the merits of a compromise offer, USAID may obtain a current financial statement from the debtor, executed under penalty of perjury, showing the debtor's assets, liabilities, income and expense.

(e) Statutory penalties, forfeitures or debts established as an aid to enforcement and to compel compliance may be compromised where the CFO determines that the Agency's enforcement policy, in terms of deterrence and securing compliance (both present and future), will be adequately served by accepting the offer.

§ 213.26 Payment of compromised claims.

The CFO normally will not approve a debtor's request to pay a compromised claim in installments. However, where the CFO determines that payment of a compromise by installments is necessary to effect collection, a debtor's request to pay in installments may be approved.

§ 213.27 Joint and several liability.

When two or more debtors are jointly and severally liable, collection action will not be withheld against one debtor until the other or others pay their proportionate share. The amount of a compromise with one debtor is not precedent in determining compromises from other debtors who have been determined to be jointly and severally liable on the claim.

§ 213.28 Execution of releases.

Upon receipt of full payment of a claim or the amount compromised, USAID will prepare and execute a release on behalf of the United States. In the event a mutual release is not executed when a debt is compromised, unless prohibited by law, the debtor is still deemed to have waived any and all claims and causes of action against USAID and its officials related to the transaction giving rise to the compromised debt.

Subpart E—Suspension or Termination of Collection Action

§ 213.29 Suspension-General.

The CFO may suspend or terminate the Agency's collection actions on a debt where the outstanding debt principal does not exceed $100,000. Unless otherwise provided by DOJ delegations or procedures, the CFO refers requests for suspension of debts exceeding $100,000 to the Commercial Litigation Branch, Civil Division, Department of Justice, for approval. If prior to referral to DOJ, USAID determines that a debt is plainly erroneous or clearly without legal merit, the agency may terminate collection activity regardless of the amount involved without obtaining DOJ concurrence. The CFO may waive the

assessment of interest, penalty charges and administrative costs during the period of the suspension. Suspension will be for an established time period and generally will be reviewed at least every six months to ensure the continued propriety of the suspension.

§ 213.30 Standards for suspension.

(a) The CFO may suspend collection action on a debt when:

(1) The debtor cannot be located;

(2) The debtor's financial condition is expected to improve; or

(3) The debtor has requested a waiver or review of the debt.

(b) Based on the current financial condition of the debtor, the CFO may suspend collection activity on a debt when the debtor's future prospects justify retention of the claim for periodic review, and:

(1) The applicable statute of limitations has not expired; or

(2) Future collection can be effected by offset, notwithstanding the 10-year statute of limitations for administrative offsets; or

(3) The debtor agrees to pay interest on the debt and suspension is likely to enhance the debtor's ability to fully pay the principal amount of the debt with interest at a later date.

(c) The CFO will suspend collection activity during the time required for waiver consideration or administrative review prior to agency collection of a debt if the statute under which the request is sought prohibits USAID from collecting the debt during that time. The CFO will ordinarily suspend collection action during the pendency of his consideration of a waiver request or administrative review where statute and regulation preclude refund of amounts collected by the Agency should the debtor prevail.

(d) The CFO may suspend collection activities on debts of $100,000 or less during the pendency of a permissive waiver or administrative review when there is no statutory requirement where he determines that:

(1) There is a reasonable possibility that waiver will be granted and the debtor may be found not owing the debt (in whole or in part);

(2) The Government's interest is protected, if suspension is granted, by the reasonable assurance that the debt can be recovered if the debtor does not prevail; or

(3) Collection of the debt will cause undue hardship to the debtor.

(e) The CFO will decline to suspend collection where he determines that the request for waiver or administrative review is frivolous or was made primarily to delay collection.

§ 213.31 Termination-general.

The CFO may terminate collection actions including accrued interest, penalty and administrative costs, where the debt principal does not exceed $100,000. If the debt exceeds $100,000, USAID obtains the approval of DOJ in order to terminate further collection actions. Unless otherwise provided for by DOJ regulations or procedures, requests to terminate collection on debts in excess of $100,000 are referred to the Commercial Litigation Branch, Civil Division, Department of Justice, for approval.

§ 213.32 Standards for termination.

A debt may be terminated where the CFO determines that:

(a) The Government cannot collect or enforce collection of any significant sum from the debtor, having due regard for available judicial remedies, the debtor's ability to pay, and the exemptions available to the debtor under State and Federal law;

(b) The debtor cannot be located, there is no security remaining to be liquidated, and the prospects of collecting by offset are too remote to justify retention of the claim;

(c) The cost of further collection action is likely to exceed the amount recoverable;

(d) The claim is determined to be legally without merit or enforcement of the debt is barred by any applicable statute of limitations;

(e) The evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable and efforts to induce voluntary payment have failed; or

(f) The debt against the debtor has been discharged in bankruptcy.

§ 213.33 Permitted actions after termination of collection activity.

Termination of collection activity ceases active collection of the debt. Termination does not preclude the agency from retaining a record of the account for purposes of:

(a) Selling the debt if the CFO determines that such sale is in the best interests of USAID;

(b) Pursuing collection at a subsequent date in the event there is a change in the debtor's status or a new collection tool becomes available;

(c) Offsetting against future income or assets not available at the time of termination of collection activity; or

(d) Screening future applicants for prior indebtedness.

§ 213.34 Debts that have been discharged in bankruptcy.

USAID generally terminates collection activity on a debt that has been discharged in bankruptcy regardless of the amount. USAID may continue collection activity, however, subject to the provisions of the Bankruptcy Code for any payments provided under a plan of reorganization. The CFO will seek legal advice by the General Counsel's office if he believes that any claims or offsets may have survived the discharge of a debtor.

Subpart F—Discharge of Indebtedness and Reporting Requirements

§ 213.35 Discharging indebtedness—general.

Before discharging a delinquent debt (also referred to as a close out of the debt), USAID will make a determination that collection action is no longer warranted and request that litigation counsel release any liens of record securing the debt. Discharge of indebtedness is distinct from termination or suspension of collection activity and is governed by the Internal Revenue Code. When collection action on a debt is suspended or terminated, the debt remains delinquent and further collection action may be pursued at a later date in accordance with the standards set forth in this part. When a debt is discharged in full or in part, further collection action is prohibited and USAID must terminate debt collection action.

§ 213.36 Reporting to IRS.

Upon discharge of an indebtedness, USAID will report the discharge to the IRS in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P–1. USAID may request FMS to file such a discharge report to the IRS on the agency's behalf.

Subpart G—Referrals to the Department of Justice

§ 213.37 Referrals to the Department of Justice.

(a) The CFO, through the FMS cross-servicing agreement and by direct action, refers to DOJ for litigation all claims on which aggressive collection actions have been taken but which could not be collected, compromised, suspended or terminated. Referrals are made as early as possible, consistent with aggressive agency collection action, and within the period for bringing a timely suit against the debtor. Unless otherwise provided by DOJ regulations or procedures, USAID refers for litigation debts of more than $2,500 but less than $1,000,000 to the Department of Justice's Nationwide Central Intake Facility as required by the Claims Collection Litigation Report (CCLR) instructions. Debts of over

$1,000,000 shall be referred to the Civil Division at the Department of Justice.

(b) The CFO will clearly indicate on the CCLR the actions the DOJ should take on the referred claim.

Subpart H—Mandatory Transfer of Delinquent Debt to Financial Management Service (FMS) of the Department of Treasury

§ 213.38 Mandatory transfer of debts to FMS—general.

(a) USAID's procedures call for transfer of legally enforceable debt to FMS 90 days after the Bill for Collection or demand letter is issued. A debt is legally enforceable if there has been a final agency determination that the debt, in the amount stated, is due and there are no legal bars to collection action. A debt is not considered legally enforceable for purposes of mandatory transfer to FMS if a debt is the subject of a pending administrative review process required by statute or regulation and collection action during the review process is prohibited.

(b) Except as set forth in paragraph (a) of this section, USAID will transfer any debt covered by this part that is more than 180 days delinquent to FMS for debt collection services. A debt is considered 180 days delinquent for purposes of this section if it is 180 days past due and is legally enforceable.

§ 213.39 Exceptions to mandatory transfer.

USAID is not required to transfer a debt to FMS pursuant to § 213.37(b) during such period of time that the debt:

(a) Is in litigation or foreclosure;

(b) Is scheduled for sale;

(c) Is at a private collection contractor;

(d) Is at a debt collection center if the debt has been referred to a Treasury-designated debt collection center;

(e) Is being collected by internal offset; or

(f) Is covered by an exemption granted by Treasury

Dated: April 4, 2002.

Linda Porter,

Authorized Representative, Agency for International Development.

[FR Doc. 02–8518 Filed 4–10–02; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–02–025]

RIN 2115–AA97

Special Local Regulations: Weymouth 4th of July Celebration—Fore River—Weymouth, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend its temporary special local regulations for the Weymouth Fourth of July Celebration in Weymouth, MA. The proposed rule would change the effective date of the special local regulations to occur annually on July 3, as opposed to annually on the Friday or Saturday prior to July 4. The special local regulations would continue to prohibit entry into or movement within a portion of the Weymouth Fore River during the fireworks display.

DATES: Comments and related material must reach the Coast Guard on or before May 13, 2002.

ADDRESSES: You may mail comments and related material to Marine Safety Office Boston, 455 Commercial Street, Boston, MA. Marine Safety Office Boston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of the docket and will be available for inspection or copying at Marine Safety Office Boston between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Michael Popovich, Marine Safety Office Boston, Waterways Safety and Response Division, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Request for Information

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–02–025), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your comments reached us, please enclose a stamped, self addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. However, you may submit a request for a meeting by writing to Marine Safety Office Boston at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

This regulation proposes to change the effective date of the special local regulations for the Weymouth Fourth of July Fireworks from annually on the Friday or Saturday prior to July 4 to annually on July 3. This change is necessary because the sponsors of the event, the Town of Hingham, Massachusetts, have requested the change in event dates. The Coast Guard must change the effective date of the special local regulations to run concurrent with the actual event in order to protect the maritime public from the dangers posed by a fireworks display. We are not proposing any change in the size or location of the special local regulations. Marine traffic may continue to transit safely outside of the special local regulations during the effective periods. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Public notifications will be made prior to the effective period via safety marine information broadcasts and local notice to mariners.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this proposed regulation will prevent traffic from transiting a portion of the Weymouth Fore River

during the effective period, the effects of this regulation will not be significant for the following reasons: the minimal time that vessels will be restricted from the area, the fact that vessels may safely transit outside of the special local regulations, and the advance notifications which will be made to the local maritime community by safety marine information broadcasts and local notice to mariners.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Weymouth Fore River between 8:30 p.m. and 11 p.m. on July 3, 2002. This special local regulations will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic can safely pass outside of the area affected by the special local regulations during the effective periods, the periods are limited in duration, and advance notifications will be made to the local maritime community by safety marine information broadcasts and local notice to mariners.

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

Assistance for Small Entities

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

Collection of Information

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

Federalism

The Coast Guard analyzed this proposed rule under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2–1, (34)(h), of Commandant Instruction M16475.lD, this proposed rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—REGATTAS AND MARINE PARADES [AMENDED]

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

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. In § 100.114, in the FIREWORKS DISPLAY TABLE, in the unit under ''July'', revise the entry for Massachusetts: 7.11 to read as follows:

§ 100.114 Fireworks displays within the First Coast Guard District.

(a) * * *

FIREWORKS DISPLAY TABLE

*	*	*
Massachusetts:		
027.11	July 4th	Name: Weymouth 4th of July Fireworks. Sponsor: Town of Weymouth Harbormaster. Time: 8:30 p.m. to 10:45 p.m. Location: Weymouth Fore River, Weymouth, MA. 42°15′30″N/70°56′6″W (NAD 1983).

* * * * *

Dated: March 25, 2002.

M.E. Landry,

Commander, Coast Guard, Captain of the Port, Acting, Boston, Massachusetts.

[FR Doc. 02–8789 Filed 4–10–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–004]

RIN 2115–AA97

Security Zone; Captain of the Port Detroit Zone, Selfridge Air National Guard Base, Lake St. Clair

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent security zone on the navigable waters of Lake St. Clair in the Captain of the Port Detroit Zone. This security zone is necessary to protect the Selfridge Air National Guard Base from possible acts of terrorism. This security zone is intended to restrict vessel traffic from a predetermined and specific area in Lake St. Clair off of Selfridge Air National Guard Base.

DATES: Comments and related material must reach the Coast Guard on or before May 13, 2002.

ADDRESSES: You may mail comments to U.S. Coast Guard Marine Safety Office Detroit, 110 Mt. Elliott Ave, Detroit, Michigan 48207. The telephone number is (313) 568–9580. Marine Safety Office Detroit maintains the public docket for this rulemaking. Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade (LTJG) Brandon Sullivan, U.S. Coast Guard Marine Safety Office Detroit, 110 Mt. Elliott Ave, Detroit, Michigan 48207, (313) 568–9580.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD09–02–004), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to U.S. Coast Guard Marine Safety Office Detroit at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On September 11, 2001, the United States was the target of coordinated attacks by international terrorists resulting in catastrophic loss of life, the destruction of the World Trade Center and significant damage to the Pentagon. National security and intelligence officials warn that future terrorists attacks are likely.

We propose to establish a permanent security zone in the waters off of Selfridge Air National Guard Base in Harrison Township, Michigan. The security zone commences at the northeast corner of Selfridge Air National Guard Base at 42° 37.8′ N, 082° 49.1′ W; then eastward approximately one half mile from shore to 42° 37.8′ N, 082° 48.45′ W, then south to 42° 37.2′ N, 082° 48.45′ W, then southeast to 42° 36.8′ N, 082° 47.2′ W, then southwest to Mac and Rays Marina 42° 36.4′ N, 082° 47.9′ W. These coordinates are based upon North American Datum 1983 (NAD 83). The westerly boundary is the shoreline of Selfridge Air National Guard Base.

This security zone is necessary to protect the public, facilities, and the surrounding area from possible sabotage or other subversive acts. All persons other than those approved by the Captain of the Port Detroit, or his authorized representative, are prohibited from entering or moving within this zone. The Captain of the Port Detroit may be contacted via VHF Channel 16 for further instructions before transiting through the restricted area. The Captain of the Port Detroit's on-scene representative will be the patrol commander. In addition to publication in the **Federal Register**, the public will be made aware of the existence of this security zone, exact location and the restrictions involved, via Broadcast Notice to Mariners.

Discussion of Proposed Rule

Following the catastrophic nature and extent of damage realized from the attacks of September 11, this proposed rulemaking is necessary to protect the national security interests of the United States against future attacks.

On September 24, 2001 we published a temporary final rule establishing a security zone on the waters around Selfridge Air National Guard Base (66 FR 48796), which was later amended on October 18, 2001 (66 FR 52851). The current rulemaking proposes to establish a permanent security zone in place of that temporary security zone. This regulation proposes to establish permanent security zone for the waters off of Selfridge Air National Guard Base in Harrison Township, Michigan, commencing at the northeast corner of Selfridge Air National Guard Base at 42° 37.8′ N, 082° 49.1′ W; then eastward approximately one half mile from shore to 42° 37.8′ N, 082° 48.45′ W; then south to 42° 37.2′ N, 082° 48.45′ W; then southeast to 42° 36.8′ N, 082° 47.2′ W; then southwest to Mac and Rays Marina 42° 36.4′ N, 082° 47.9′ W. These coordinates are based upon North American Datum 1983 (NAD 83). The westerly boundary is the shoreline of Selfridge Air National Guard Base.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has exempted it from review under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

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

owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

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

This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will not obstruct the regular flow of commercial traffic and will allow vessel traffic to pass around the security zone.

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

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

We have analyzed this proposed rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

The Coast Guard has considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34) (g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

§ 165.T09–998 [Removed]

2. Remove § 165.T09–998

3. Add § 165.910 to read as follows:

§ 165.910 Security Zone; Captain of the Port Detroit Zone, Selfridge Air National Guard Base.

(a) *Location.* The following is a security zone: Commencing at the northeast corner of Selfridge Air National Guard Base at 42°37.8′ N, 082°49.1′ W; then eastward approximately one half mile from shore to 42°37.8′ N, 082°48.45′ W; then south to 42°37.2′ N, 082°48.45′ W; then southeast to 42°36.8′ N, 082°47.2′ W; then southwest to Mac and Rays Marina 42°36.4′ N, 082°47.9′ W (NAD 83). The westerly boundary is the shoreline of Selfridge Air National Guard Base.

(b) *Regulations.* (1) In accordance with § 165.33, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Detroit. Section 165.33 also contains other general requirements.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port Detroit at telephone number (313) 568–9580, or on VHF/FM channel 16 to seek permission to transit the area. If permission is granted, all persons and vessels shall comply with

the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: April 4, 2002.

P. G. Gerrity,

Commander, Coast Guard, Captain of the Port Detroit.

[FR Doc. 02–8786 Filed 4–10–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–123; KY–123–1; KY 137–200218(b); FRL–7169–8]

Approval and Promulgation of Implementation Plans: Kentucky: Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) revision that was submitted by the Commonwealth of Kentucky (Kentucky) on January 31, 2002. This revision responds to EPA's regulation entitled, ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' otherwise known as the ''NO_X SIP Call.'' This revision establishes and requires nitrogen oxides (NO_X) reduction requirements and an allowance trading program for large electric generating and industrial units, beginning in 2004. It also establishes and requires NO_X reduction requirements for cement kilns beginning in 2004. The revision includes a budget demonstration and initial source allocations that clearly demonstrate that Kentucky will achieve the required NO_X emission reductions in accordance with the timelines set forth in EPA's NO_X SIP Call. The intended effect of this SIP revision is to reduce emissions of NO_X in order to help attain the national ambient air quality standard for ozone. EPA is approving Kentucky's NO_X Reduction and Trading Program because it meets the requirements of the Phase I NO_X SIP Call that will significantly reduce ozone transport in the eastern United States.

EPA is also approving several revisions to existing regulation 401 KAR 51:001 (Definitions for 401 KAR Chapter 51) that do not address NO_X SIP Call requirements, but fulfill other Kentucky statutory requirements. In the Final Rules Section of this **Federal Register**, the EPA is approving the Kentucky NO_X SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before May 13, 2002.

ADDRESSES: All comments should be addressed to: Sean Lakeman; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW; Atlanta, Georgia 30303–8960. Copies of Kentucky's submittals and other information relevant to this action are available for inspection during normal business hours at the following addresses: Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601–1403.

The interested persons wanting to examine these documents should make an appointment at least 24 hours before the visiting day and reference files KY–123, KY–123–1 and KY–137.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW.; Atlanta, Georgia 30303–8960. Mr. Lakeman can also be reached by phone at (404) 562–9043 or by electronic mail at lakeman.sean@epa.gov.

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

Dated: April 1, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–8684 Filed 4–10–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–691; MM Docket No. 02–63, RM–10398]

Radio Broadcasting Services; Walla Walla and Burbank, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Alexandra Communications proposing the reallotment of Channel 256C2 from Walla Walla to Burbank, Washington, and the modification of Station KUJ–FM's construction permit accordingly. Channel 265C2 can be reallotted to Burbank in compliance with the Commission's minimum distance separation at without the imposition of a site restriction petitioner's presently licensed site. The coordinates for Channel 256C2 at Burbank are 45–57–22 North Latitude and 118–41–11West Longitude. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 256C2 at Burbank, Washington.

DATES: Comments must be filed on or before May 13, 2002, reply comments on or before May 28, 2002.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mr. Thomas D. Hodgins, Alexandra Communications, 45 Campbell Road, Walla Walla, Washington 99362 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 02–63, adopted March 13, 2002, released March 22, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased

from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 256C2 at Walla Walla; and by adding Burbank, Channel 256C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–8749 Filed 4–10–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–735, MB Docket No. 02–69, RM–10385]

Radio Broadcasting Services; Jennings and Iowa, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Apex Broadcasting, Inc. requesting the reallotment of Channel 225C2 from Jennings, Louisiana, to Iowa, Louisiana, and modification of the license for Station KJEF–FM to specify operation on Channel 225C2 at Iowa, Louisiana, as its community of license. The coordinates for Channel 225C2 at Iowa are 30–05–17 and 93–00–05. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 225C2 at Iowa.

DATES: Comments must be filed on or before May 20, 2002, and reply comments on or before June 4, 2002.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Erwin G. Krasnow, Verner, Liipfert, Bernhard, McPherson and Hand, 901 15th Street, NW., Suite 700, Washington, DC 20005.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–69, adopted March 25, 2002, and released March 29, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554 telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.* Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Jennings, Channel 225C2 and adding Iowa, Channel 225C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Office of Broadcast License Policy, Media Bureau.

[FR Doc. 02–8797 Filed 4–10–02; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 67, No. 70

Thursday, April 11, 2002

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

AGENCY FOR INTERNATIONAL DEVELOPMENT

Food Security Advisory Committee of the Board of International Food and Agricultural Development; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given for a meeting of the Food Security Advisory Committee (FSAC). The meeting will be held from 9 a.m. to 1 p.m. on April 23, 2002 in the NASULGC Board Room, ground floor of 1307 New York Avenue, NW., Washington, DC.

The agenda calls for FSAC to review the draft U.S. statement for the next World Food Summit, solicit civil society input, and report findings and recommendations to the Interagency Working Group (IWG) on Food Security.

Those wishing to attend the meeting or to obtain additional information about FSAC may contact Larry Paulson, BIFAD Federal Officer, at the U.S. Agency for International Development, Ronald Reagan Building, Office of Agriculture and Food Security, 1300 Pennsylvania Avenue, NW., Room 2.11–072, Washington, DC. 20523–2110; or phone (202)–712–1436, fax (202–216–3010, or email *lpaulson@usaid.gov.*

Lawrence E. Paulson,

BIFAD Federal Officer, Office of Agriculture and Food Security, Center for Economic Growth & Agricultural Development Center, Bureau for Global Programs, USAID.

[FR Doc. 02–8800 Filed 4–10–02; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

49 Degrees North Mountain Resort Revised Master Plan, Colville National Forest, Stevens County, Washington

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) to analyze and disclose the environmental impacts of a site-specific proposal to revise the master plan and the present special use permit of the Chewelah Basin Ski Corporation, current operator of the 49 Degrees North Mountain Resort. The proposed master plan would replace the existing 1977 master plan. This master plan would expand the ski area from it's current size of about 900 acres to 2,100 acres, utilizing the entire area the 1988 Colville National Forest Land and Resources Management Plan designated for downhill skiing (Management Area 3C). Chewelah Basin Ski Corporation owns about 320 acres adjacent to the current permit area. All or portions of the proposed activities would occur on this private land. The proposal revises the master plan and includes projects that expand downhill skiing capacity and improve the downhill skiing experience, expands the Nordic skiing capacity, develops the associated infrastructure, and includes summer use of the permit area. The proposal may require a minor Forest Plan amendment because the Forest Plan Management Area 3C boundaries do not precisely coincide with the ridge tops. Connected action on adjacent private land, which will be evaluated as part of this proposal, include: (1) Constructing a mid-way lodge; (2) plating and preparing for the development of 120 residential housing units clustered on 32 acres; and (3) transferring one mile of Forest Road 4300473 to Stevens County. Portions of the proposal ski trails, water pipeline, electrical cable would be located on private land. 49 Degrees North Mountain Resort is located approximately 10 miles east of the city of Chewelah, Washington and approximately 50 miles north of the city of Spokane, Washington. The purpose of the EIS will be to develop and evaluate a range of alternatives, including a No Action alternative and possible additional alternatives, to respond to issues identified during the scoping process. Except as described above, the proposed action is in compliance with the direction in the Colville National Forest Land and Resources Management Plan, which provides the overall guidance for the management area. The Agency invites written comments on the scope of this project. In addition, the agency gives notice of this analysis so that interested and affected people are aware of how they may participate and contribute to the final decision.

ADDRESSES: Submit written comments and suggestions to Nora B. Rasure, Forest Supervisor, Colville National Forest, 765 South Main, Colville, Washington 99114. Attn: 49 Degrees North Revised Master Plan.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to Dan Dallas, District Ranger, Newport Ranger District, 315 North Warren, Newport, Washington 99156; phone 509–447–3129.

SUPPLEMENTARY INFORMATION: Chewelah Basin Ski Corporation, owner of 49 Degrees North Mountain Resort, has been working to revise their master plan since they purchased the ski area in 1996. The Colville National Forest is initiating this action in response to a proposed revision of the master plan submitted by the corporation.

The proposal would expand downhill skiing capacity and improve the downhill skiing experience by—(1) expanding ski runs from about 540 to 860 acres, (2) expanding tree skiing from about 200 acres to 470 acres, (3) constructing one chair lift, and (4) installing three culverts and extending two culverts on existing ski runs. Develop new Nordic skiing facilities by—(1) developing about 12 miles of cross-country ski trails, and (2) constructing a Nordic ski center with an ice rink. Develop the necessary infrastructure by—(1) expanding the current lodge, (2) expanding the wastewater treatment facility, (3) installing additional water supply pipeline, (4) installing a larger water storage tank, (5) installing more underground electrical cable, (6) expanding the parking and including a small RV park, (7) constructing about 0.75 miles of new primitive road to access work areas, (8) constructing a new maintenance shop, and (9) re-aligning the entrance road. The proposal further includes summer use of the area by—(1) allowing biking and hiking on the Nordic ski trails, and (2) developing a small tent camping area near the Nordic center.

A range of alternatives will be considered, including a No Action alternative. Other alternatives will be developed in response to issues received during scoping. Preliminary issues that have been identified include the potential effects of structures and developments on—streams and riparian areas, wildlife habitats., and heritage resources.

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

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for review in July 2002. The EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period of the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, Tribes, and members of the public for their review and comment. It is very important that those interested in the management of the Colville National Forest participate at that time.

The Forest Service believes it is important, at this early stage, to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and connections. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft EIS stage, but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

The final EIS is scheduled to be completed October 2002. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations and policies considered in making the decision regarding this proposal.

Nora B. Rasure, Forest Supervisor, Colville National Forest is the responsible official. As the responsible official, she will document the decision and reasons for the decision in the record of decision. That decision will be subject to Forest Service Appeal Regulation (36 CFR Part 215).

Dated: March 25, 2002.

Nora B. Rasure,

Forest Supervisor.

[FR Doc. 02–8771 Filed 4–10–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to the Natural Resources Conservation Service's National Handbook of Conservation Practices

AGENCY: Natural Resources Conservation Service (NRCS), Department of Agriculture.

ACTION: Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices, Section IV of the Maine State NRCS Field Office Technical Guide (FOTG) located at *www.me.nrcs.usda.gov* under ''Draft Standards for Comments'' for review and comment.

SUMMARY: It is the intention of NRCS to issue revised conservation practice standards in its National Handbook of Conservation Practices. These revised standards are the following: 317 Composting Facility; 449 Irrigation Water Management; 595 Pest Management; 614 Watering Facility; 560 Access Road; 362 Diversion; 399 Fishpond Management; 512 Pasture and Hay Planting; 521C Pond Sealing or Lining—Bentonite Sealant; 521B Pond Sealing or Lining—Soil Dispersant; 558 Roof Runoff Structure; 633 Waste Utilization;645 Upland Wildlife Habitat Management.

DATES: Comments will be received on or before May 13, 2000.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Christopher R. Jones, Assistant State Conservationist for Technology/Planning, Natural Resources Conservation Service (NRCS), 967 Illinois Avenue, Suite #3; Bangor, Maine 04401.

A copy of this standard is available from the above individual.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agricultural Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State Technical Guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made.

Dated: March 25, 2002.

Christopher R. Jones,

Assistant State Conservationist for Technology/Planning.

[FR Doc. 02–8766 Filed 4–10–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Addition of Public Review Meetings for the Draft Revised Management Plan for the Hawaiian Islands Humpback Whale National Marine Sanctuary

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Addition of public review meetings.

SUMMARY: The Hawaiian Islands Humpback Whale National Marine Sanctuary was Congressionally

designated by the Hawaiian Islands National Marine Sanctuary Act (HINMSA) on November 4, 1992 (Subtitle C of Public Law 102–587, the Oceans Act of 1992). On Friday, March 28, 1997, the final regulations were published in the **Federal Register** (62 FR 14799), and became effective on June 6, 1997.

At the time of designation, NOAA made a commitment to the State of Hawaii that five years after the management plan and regulations had become effective, NOAA, in consultation with the State of Hawaii, would evaluate the progress made toward implementing the management plan, regulations, and goals for the Sanctuary. NOAA also agreed that after the evaluation was complete, NOAA would then re-submit the management plan and regulations in their entirety, as far as they effect State waters, to the Governor for his approval. The draft revised management plan is the result of the five-year evaluation and will be submitted to the Governor. The draft revised management plan does not propose an regulatory or boundary changes.

The draft revised management plan has been completed and is now available for public review. NOAA will conduct public meetings to gather information and other comments from individuals, organizations, and government agencies on the scope, types, and significance of issues related to the Sanctuary's draft revised management plan. Written comments may also be sent to the address below or via email at *hihumpbackwhale@noaa.gov.* The public review period will run from March 19 until May 24, 2002. The public meetings are scheduled for May 1–May 9, 2002, and were announced in the **Federal Register** on Tuesday, March 19 (67 FR 12525). Two additional meetings have now been added for May 21 and May 22.

DATES AND ADDRESSES: Written Comments may be sent to the Naomi McIntosh, Hawaiian Islands Humpback Whale National Marine Sanctuary (Management Plan Review), 6700 Kalanianaole Highway, Suite 104, Honolulu, Hawaii 96825. Comments will be available for public review at the same address. Written comments should be received on or before May 24, 2002. Public meetings already announced will be held on May 1 on Oahu, May 2 on Maui, May 3 on Kauai, and May 8 and 9 on the Big Island of Hawaii (Kona and Hilo respectively). The two new public meetings will be on May 21 on Lanai and May 22 on Molokai as follows:

(1) Tuesday, May 21, 6 to 9 p.m., Lanai Public Library, Frazier Avenue, Lanai City, Lanai, Hawaii.

(2) Wednesday, May 22, 6 to 9 p.m., Mitchell Pauole Center, 90 Ainoa Street, Kaunakakai, Molokai, Hawaii.

FOR FURTHER INFORMATION CONTACT: Anne Reisewitz, MPR Coordinator, by phone at (808) 397–2651 or via e-mail at *Annelore.Reisewitz@noaa.gov.*

Authority: 16 U.S.C. Section 1431 et seq., Pub. L. 106–513.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: April 4, 2002.

Margaret A. Davidson,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–8653 Filed 4–10–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Extension of Public Scoping Period for the Proposed Designation of the Northwestern Hawaiian Islands National Marine Sanctuary

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: On December 4, 2000, Executive Order 13178 established the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, pursuant to the National Marine Sanctuaries Amendments Act of 2000. The Reserve extends approximately 1200 nautical miles long and 100 nautical miles wide. Pursuant to this Act and the Executive Order, NOAA initiated the process to designate the Reserve as a national marine sanctuary by issuing a notice of intent on January 19, 2001 (66 FR 5509). The public scoping period was announced on March 18, 2002 (67 FR 11996), with an closing date of May 3, 2002. In order to provide additional time for the public to provide written comments and to better coincide with the comment period on the Draft Reserve Operations Plan that was released on March 18, 2002 (67 FR 11997), the close of the public scoping meeting is extended to May 17, 2002.

DATES AND ADDRESSES: The public scoping process began on March 18, 2002, and ends on Friday, May 17, 2002. Written comments may be sent to NWHI Coral Reef Ecosystem Reserve, 6700 Kalanianaòle Highway, #215, Honolulu, Hawaii 96825; faxed to (808) 397–2662; or emailed to *nwhi@noaa.gov.* Comments will be available for public review at the office address above. Summaries of public comments from initial scoping meetings will be available at *hawaiireef.noaa.gov.* Scoping meetings will be held in April.

FOR FURTHER INFORMATION CONTACT: Àulani Wilhelm, (808) 397–2657, *nwhi@noaa.gov.*

Authority: 16 U.S.C. Section 1431 et seq., Pub. L. 106–513,

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: April 4, 2002.

Margaret A. Davidson,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–8654 Filed 4–10–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040402C]

Coral, Golden Crab, Shrimp, Spiny Lobster, Red Drum, Coastal Migratory Pelagic Resources, and Snapper-Grouper Fisheries of the South Atlantic

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

ACTION: Notice of receipt of an application for an exempted fishing permit; request for comments.

SUMMARY: NMFS announces the receipt of an application for an exempted fishing permit (EFP) from Lindsey G. Parker, Captain R/V GEORGIA BULLDOG, on behalf of the University of Georgia's Marine Education Center and Aquarium (MECA). If granted, the EFP would authorize the applicant, with certain conditions, to collect up to 200 juvenile (undersized) individuals in the snapper-grouper and coastal pelagics complex annually. Less than 10 non egg-bearing spiny or slipper lobster would be collected on each cruise. Two cruises will be made annually in Federal waters off Georgia for public display purposes. Specimens will be displayed at MECA, which is located on Skidaway Island, near Savannah, Georgia.

DATES: Comments must be received no later than 5 p.m., eastern standard time, on May 13, 2002.

ADDRESSES: Comments on the application must be mailed to Peter Eldridge, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or Internet.

The application and related documents are available for review upon written request to the address above.

FOR FURTHER INFORMATION CONTACT: Peter Eldridge, 727–570–5305; fax 727–570–5583; e-mail: peter.eldridge@noaa.gov.

SUPPLEMENTARY INFORMATION: The EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and regulations at 50 CFR 600.745(b) concerning exempted fishing.

According to the applicant, MECA, located at Skidaway Island, is a public, non-profit, educational institution established to promote an awareness, understanding, and appreciation of the diverse natural resources associated with Georgia's ocean, estuaries, rivers, streams, and other aquatic environments.

MECA provides a variety of education programs: short academic classes and summer science camps for school children, classes for college students and teachers, and programs for visiting adult groups. The saltwater aquarium exhibits local marine fishes and invertebrates, and is used as an educational tool in these programs.

The applicant intends to make two cruises annually to collect specimens for public display during the period July 1, 2002 through June 30, 2004.

The proposed collection for public display involves activities otherwise prohibited by regulations implementing the Fishery Management Plan (FMP) for the Snapper-Grouper Fisheries of the South Atlantic Region, the FMP for the Coastal Migratory Pelagic Resources (Mackerels), and the FMP for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic. The applicant requires authorization to harvest and possess juvenile mackerels, snapper-grouper species, and spiny lobster taken from Federal waters off Georgia.

Based on a preliminary review, NMFS finds that this application warrants further consideration and intends to issue an EFP. A final decision on issuance of the EFP will depend on a NMFS review of public comments received on the application, conclusions of environmental analyses conducted pursuant to the National Environmental Policy Act, and consultations with Georgia, the South Atlantic Fishery Management Council, and the U.S. Coast Guard. The applicant requests a 24–month effective period for the EFP.

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

Dated: April 5, 2002.

John H. Dunnigan,

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

[FR Doc. 02–8831 Filed 4–10–02; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIMES AND DATE: 11 a.m., Friday, May 3, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–8921 Filed 4–9–02; 2:48 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURE TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Future Trading Commission.

TIME AND DATE: 11 a.m., Friday, May 10, 2002.

PLACE: 1155 21st., NW., Washington, DC, 9th Floor Conference Room.

STATUS Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–8922 Filed 4–9–02; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission

TIME AND DATE: 11 a.m., Friday, May 17, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–8923 Filed 4–9–02; 2:48 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, May 24, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–8924 Filed 4–9–02; 2:48 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Future Trading Commission.

TIME AND DATE: 11 a.m., Friday, May 31, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–8925 Filed 4–9–02; 2:48 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0074]

Federal Acquisition Regulation; Information Collection; Limitation of Costs/Funds

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.

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 limitation of costs/funds. The clearance currently expires on June 30, 2002.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before June 10, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeremy F. Olson, Acquisition Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Firms performing under Federal cost-reimbursement contracts are required to notify the contracting officer in writing whenever they have reason to believe—

(1) The costs the contractors expect to incur under the contracts in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost of the contracts; or

(2) The total cost for the performance of the contracts will be greater or substantially less than estimated. As a part of the notification, the contractors must provide a revised estimate of total cost.

B. Annual Reporting Burden

Respondents: 63,456.
Responses Per Respondent: 1.
Annual Responses: 63,456.
Hours Per Response: .5.
Total Burden Hours: 31,728.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0074, Limitation of Costs/Funds, in all correspondence.

Dated: April 4, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–8758 Filed 4–10–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0070]

Federal Acquisition Regulation; Information Collection; Payments

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.

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 payments. The clearance currently expires on June 30, 2002.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before June 10, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0070, Payments, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Jeremy F. Olson, Acquisition Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Firms performing under Federal contracts must provide adequate documentation to support requests for payment under these contracts. The documentation may range from a simple invoice to detailed cost data. The information is usually submitted once, at the end of the contract period or upon delivery of the supplies, but could be submitted more often depending on the payment schedule established under the contract (see FAR 52.232–1 through 52.232–11). The information is used to determine the proper amount of payments to Federal contractors.

B. Annual Reporting Burden

Respondents: 80,000.

Responses Per Respondent: 120.
Annual Responses: 9,600,000.
Hours Per Response: .025.
Total Burden Hours: 240,000.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0070, Payments, in all correspondence.

Dated: April 4, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–8759 Filed 4–10–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0073]

Federal Acquisition Regulation; Information Collection; Advance Payments

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.

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 advance payments. The clearance currently expires on June 30, 2002.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before June 10, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeremy F. Olson, Acquisition Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Advance payments may be authorized under Federal contracts and subcontracts. Advance payments are the least preferred method of contract financing and require special determinations by the agency head or designee. Specific financial information about the contractor is required before determinations by the agency head or designee. Specific financial information about the contractor is required before such payments can be authorized (see FAR 32.4 and 52.232–12). The information is used to determine if advance payments should be provided to the contractor.

B. Annual Reporting Burden

Respondents: 500.

Responses Per Respondent: 1.

Annual Responses: 500.

Hours Per Response: 1.

Total Burden Hours: 500.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0073, Advance Payments, in all correspondence.

Dated: April 4, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–8760 Filed 4–10–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0054]

Federal Acquisition Regulation; Information Collection; U.S.-Flag Air Carriers Certification

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.

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 U.S.-Flag Air Carriers Certification. The clearance currently expires on June 30, 2002.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before June 10, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

Section 5 of the International Air Transportation Fair Competitive

Practices Act of 1974 (49 U.S.C. 1517) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if an U.S.-flag carrier is available to provide such services. In the event that the contractor selects a carrier other than an U.S.-flag air carrier for international air transportation, the contractor shall include a certification on vouchers involving such transportation. The contracting officer uses the information furnished in the certification to determine whether adequate justification exists for the contractor's use of other than an U.S.-flag air carrier.

B. Annual Reporting Burden

Respondents: 150.

Responses Per Respondent: 2.

Annual Responses: 300.

Hours Per Response: .25.

Total Burden Hours: 75.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0054, U.S. -Flag Air Carriers Certification, in all correspondence.

Dated: April 4, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–8761 Filed 4–10–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0061]

Federal Acquisition Regulation; Information Collection; Transportation Requirements

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.

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 transportation requirements. The clearance currently expires on June 30, 2002.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before June 10, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR Part 47 and related clauses contain policies and procedures for applying transportation and traffic management considerations in the acquisition of supplies and acquiring transportation or transportation-related services. Generally, contracts involving transportation require information regarding the nature of the supplies, method of shipment, place and time of shipment, applicable charges, marking of shipments, shipping documents and other related items. This information is required to ensure proper and timely shipment of Government supplies.

B. Annual Reporting Burden

Respondents: 65,000.

Responses Per Respondent: 4.4.

Annual Responses: 286,000.

Hours Per Response: .23.

Total Burden Hours: 65,780.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0061, Transportation Requirements, in all correspondence.

Dated: April 4, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–8762 Filed 4–10–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0053]

Federal Acquisition Regulation; Information Collection; Permits, Authorities, or Franchises Certification

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.

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 permits, authorities, or franchises certification. The clearance currently expires on June 30, 2002.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before June 10, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

This certification and copies of authorizations are needed to determine that the offeror has obtained all authorizations, permits, etc., required in connection with transporting the material involved. The contracting officer reviews the certification and any documents requested to ensure that the offeror has complied with all regulatory requirements and has obtained any permits, licenses, etc., that are needed.

B. Annual Reporting Burden

Respondents: 1,106.

Responses Per Respondent: 3.

Annual Responses: 3,318.

Hours Per Response: .094.

Total Burden Hours: 312.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0053, Permits, Authorities, or Franchises Certification, in all correspondence.

Dated: April 4, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–8763 Filed 4–10–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0057]

Federal Acquisition Regulation; Information Collection; Evaluation of Export Offers

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.

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 evaluation of export offers. The clearance currently expires on June 30, 2002.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before June 10, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

Offers submitted in response to Government solicitations must be evaluated and awards made on the basis of the lowest laid down cost to the Government at the overseas port of discharge, via methods and ports compatible with required delivery dates and conditions affecting transportation known at the time of evaluation. Offers are evaluated on the basis of shipment through the port resulting in the lowest cost to the Government. This provision collects information regarding the vendor's preference for delivery ports. The information is used to evaluate offers and award a contract based on the lowest cost to the Government.

B. Annual Reporting Burden

Respondents: 100.

Responses Per Respondent: 4.

Annual Responses: 400.

Hours Per Response: .25.

Total Burden Hours: 100.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0057, Evaluation of Export Offers, in all correspondence.

Dated: April 4, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–8764 Filed 4–10–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0055]

Federal Acquisition Regulation; Information Collection; Freight Classification Description

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 (9000–0055).

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 freight classification description. The clearance currently expires on June 30, 2002.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before June 10, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

When the Government purchases supplies that are new to the supply system, nonstandard, or modifications of previously shipped items, and different freight classifications may apply, offerors are requested to indicate the full Uniform Freight Classification or National Motor Freight Classification. The information is used to determine the proper freight rate for the supplies.

B. Annual Reporting Burden

Respondents: 2,640.
Responses Per Respondent: 3.
Annual Responses: 7,920.
Hours Per Response: .167.
Total Burden Hours: 1,323.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0055, Freight Classification Description, in all correspondence.

Dated: April 4, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–8765 Filed 4–10–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Department of the Army

Defense Transportation Regulation, Part IV, Personal Property; Proposed Change

AGENCY: Department of the Army, DoD.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Transportation Command proposes to issue an updated version of DOD 4500.9–R, the Defense Transportation Regulation (DTR), Part IV, Personal Property. The revised DOD Regulation 4500.9–R, Part IV, replaces DOD Regulation 4500.34R. *Personal Property Traffic Management Regulation (PPTMR)* dated August 1999 and applies to the Office of the Secretary of Defense, Military Departments, Chairman and Joint Chiefs of Staff, Unified Commands, and the Defense Agencies. All chapters and appendices have been re-numbered to specifically identify them with DTR Part IV. Notable substantive changes have been made to several sections of this publication that may affect the household goods industry.

DATES: U.S. Transportation Command will receive comments not later than June 10, 2002, via formal correspondence to United States Transportation Command, Attn: TCJ4–LT, 508 Scott Drive, Scott AFB, IL 62225–5357.

FOR FURTHER INFORMATION CONTACT: David Myers, U.S. Transportation Command, TCJ4–LTP, 508 Scott Drive, Room 264, Scott AFB, IL 62225–5357; Telephone (618) 229–1985.

SUPPLEMENTARY INFORMATION: In furtherance of DOD's goal of making its Personal Property Program more efficient, the following changes have been made:

A. Changes to the Tender of Service centered on the addition of Required Port Delivery Date (RPDD) provisions. The RPDD is a specified calendar date upon which the carrier/contractor agrees to deliver code J and/or DPM unaccompanied baggage shipments to the APOE as specified on the bill of lading and required by the tender of service/rate solicitation or appropriate contracts. The RPDD is established to support the Advance Shipping Notice (ASN) program. ASN is a developing capability to accurately predict cargo arrival by weight, cube and channel at Air Mobility Command Aerial Ports of Embarkation (APOEs) regardless of operational tempo, in time to impact aircraft scheduling.

B. A new Performance Work Statement, which has been completely rewritten to reflect a performance-based direct procurement method (DPM) shipments. As a requirements type contract many of the clauses, which define how to perform the ordered services, are replaced with clauses addressing the actual requirements. This Performance Work Statement also reflects updated specifications for household goods containers, crates, fiberboard containers, strapping, and cushioning material. Additionally, this Performance Work Statement includes the addition of Required Port Delivery Date (RPDD) provisions for DPM shipments.

C. An updated version of the Transit Times for International through Government Bill of Lading and Direct Procurement Method Household Goods Shipments between the Continental United States, Hawaii and Overseas. The transit times were developed by the Military Traffic Management Command in coordination with the Service headquarters and Industry and are based on actual transportation experience, capabilities, and schedules, and are effective for IWO2 rate cycle.

D. Updates to the Total Quality Assurance Program to include (1) restrictions placed on carrier personnel from smoking in the member's residence (without member's approval) or in the moving van or container; (2) addition of RPDD provisions, (3) Carriers return to the TDR after return of LOI, (4) conversion of shipments to (NTS) or commercial storage not requiring a DD Form 1840 for scoring, (5) procedures for what to do if there is not enough information to develop an estimate of the loss/or damage, i.e. the PPSO will indicate a dollar amount under $100 on DD Form 1780, (6) elimination of or reduction of shipment scores when ''Date signed'', Blocks 14 and 15 have not been completed on the 1840 form (7) procedures to follow if a ''Shipment is Detained by Customs''.

E. An updated requirement for the Military Shipping Label used in the movement of DOD household goods and

unaccompanied baggage. The 2-dimensional bar coding requirement is found in the following locations within the new DTR Part IV:

(1) Chapter 402, Paragraph K.7.c. ''The carrier agent must have the equipment to produce both linear and 2D barcode shipping labels or have contracted means to provide linear and 2D barcode labels.''

(2) Chapter 403, Paragraph C.1. ''ITGBL and DPM HHG and UB containers must have a completed military shipping label (MSL) affixed on one side and one end panel, except for duffel bags and similar packages which must have an MSL affixed to one surface. The MSL (Figure 403–2) requires human-readable information as well as linear and 2-dimensional bar codes. The human readable and linear bar coded portions of the MSL, are prepared by the carrier or carrier's agent as described below and the 2-dimensional bar code is prepared IAW Appendix S. If the shipping container does not lend itself to application of the label, or if the label would cover or interfere with other required markings, the label will be attached to a general purpose tag or a placard. The general purpose tag or placard will be tied, wired, or otherwise fastened to the shipment unit or movement conveyance.''

(3) Chapter 403, Paragraph C.2. ''the following listed human readable data and Code 39 linear bar codes will be placed on each MSL. The human readable unit of measure will be provided in US standard terms, e.g., pieces, inches, feet, pounds for applicable measured items and the data values will be rounded up to the nearest whole number with leading zeros suppressed. Also see DOD Handbook, MIL–HDBK–129, *Military Marking* and American National Standard for Material Handling (ANSI) MH10.8.1–2000, *Linear Bar Code and Two-Dimensional Symbols Used in Shipping, Receiving, and Transport Applications.*

F. An updated requirement for the addition of RPDD is addressed in several locations of the new DTR, to include:

1. Chapter 402, Paragraph D.3. ''Establishment of a RPDD for Code J and DPM UB Shipments''.

(a) TOPS will assign a RPDD and print it on the BL.

(b) For Code J UB shipments, the carrier/agent must provide the actual weight and cube of each shipment, within three working days after pickup. The TO/PPSO must then enter the actual weight and cube into TOPS within one working day after receipt from the local agent. The carrier/agent will stencil RPDD on all boxes.

(c) For DPM UB shipments, the contractor must provide the TO/PPSO the actual pieces, weight, and cube prior to the BL being printed and provided to the contractor or carrier. It is imperative that the contractor provides the required information to the TO/PPSO within one working day after pickup.

(d) The selected Code J/DPM port agent/carrier/contractor is responsible for delivering each shipment to the assigned AMC aerial port on the RPDD assigned. If the RPDD does not print on the BL, the TO must compute the RPDD using the formula in Chapter 413, Paragraph D.1.r.(2)(c) (for DPM) or Paragraph D.1.y.(16)(a) (for Code J) and annotate the date in Block 18 for DPM and Block 25 for Code J on the BL.''

2. Chapter 413, Paragraph D.1.r.(2)(c) ''For DPM shipments to the APOE, enter ''RPDD; (insert date) at the APOE.'' The RPDD is established from the baggage pickup date by adding the origin processing time of four workdays (not including weekends and holidays) for the origin processing time, plus the LTL standard transit time (including weekends and holidays). If the RPDD falls on a weekend or a holiday, the RPDD would be assigned the next workday. For example:

DPM Shipment from Missouri to Dover, LTL standard transit time is five days.

Pickup Date: 16 May 01 (Wednesday)

Origin Agent Processing: 17 May 01 (Thursday)—22 May 01 (Tuesday)

LTL Standard Transit Time: 23 May 01 (Wednesday)—27 May 01 (Sunday)

RPDD Printed on PPGBL: 29 May 01 (Tuesday).

This example de-conflicts both a weekend and holiday of 28 May 01 (Memorial Day).''

3. Chapter 413, Paragraph D.1.y.(16)(a) ''For Code J shipments, enter ''RPDD; (insert date) at the POE.'' the RPDD is established from the pickup date plus four workdays (not including weekends and holidays) for the origin processing time, plus the LTL standard transit time (including weekends and holidays), plus two workdays for the port agent processing and delivery (not including weekends and holidays). For example:

UB Shipment from Texas to Dover, LTL standard transit time is six days.

Pickup Date: 4 May 01 (Friday)

Origin Agent Processing: 7 May 01 (Monday)—10 May 01 (Thursday)

LTL Standard Transit Time: 11 May 01 (Friday)—16 May 01 (Wednesday)

Port Agent Processing: 17 May 01 (Thursday)—18 May 01 (Friday)

RPDD Printed on PPGBL: 18 May 01 (Friday)''

Note: In the days since the draft DTR was published and coordinated, significant improvements to the RPDD were coordinated between Industry, HQMTMC and USTRANSCOM. These changes will be advertised in a different forum, but include not penalizing the carrier for early arrival of code J to the aerial port within a 3-day window, vice one-day window.

Additional information: The following documents are available for review via the internet on MTMC's homepage at *www.mtmc.army.mil.* (1) The complete version of the DTR, (2) updated versions of the Tender of Service (Appendix B), (3) Performance Work Statement (Appendix G), (4) Transit times for International Through Government Bill of Lading and Direct Procurement Method Household Goods Shipments between the Continental United States, Hawaii and Overseas (Appendix M), (5) Transit Times for International Through Government Bill of Lading and Direct Procurement Method Unaccompanied Baggage Shipments between the Continental United States, Hawaii and Overseas (Appendix N), (6) and the Total Quality Assurance Program (Appendix O).

G. Regulatory Flexibility Act. This change is related to public contracts and is designed to standardized distance calculations for line-haul transportation. This change is not considered rule making within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

H. Paperwork Reduction Act. The Paperwork Reduction Act, 44 U.S.C. 3501 Et seq., does not apply because no information collection requirement or records keeping responsibilities are imposed on offerors, contractors, or members of the public.

Background: As agreed to at the Military/Industry Symposium, the DTR changes are being placed in the **Federal Register** for comments to ensure Industry is involved in its revision.

Patricia K. Hunt,

Col, USAF, DCS, Passenger and Personal.

[FR Doc. 02–8679 Filed 4–10–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.229A]

Office of Postsecondary Education; Language Resource Centers Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Program: The Language Resource Centers Program provides assistance to establish, strengthen and operate centers that serve as resources

for improving the nation's capacity for teaching and learning foreign languages.

Eligible Applicants: Institutions of higher education and combinations of institutions of higher education.

Applications Available: April 12, 2002.

Deadline for Transmittal of Applications: May 31, 2002.

Estimated Available Funds: $720,000.

Estimated Range of Awards: $350,000—$400,000.

Estimated Average Size of Awards: $360,000 per year.

Estimated Number of Awards: 1 award for a South Asia language resource center and 1 award for a Middle East language resource center.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 55 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1'' margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10-pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the timeline, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 82, 85, 86, 97, 98 and 99. and, (b) The regulations for this program in 34 CFR parts 655 and 669.

Priority: This competition focuses on projects designed to meet one of the priorities in the regulations for this program (34 CFR 669.22(a)(2). In particular, the competition focuses on the following priority:

Specific foreign languages for study or materials development: A language resource center funded under this priority must focus either on the languages of the Middle East or the languages of South Asia.

Under 34 CFR 75.105(c)(3) we consider only applications that meet the priority.

FOR FURTHER INFORMATION CONTACT: Jose L. Martinez or G. Edward McDermott, Language Resource Centers Program, U.S. Department of Education, International Education and Graduate Programs Service, 1990 K Street NW., Suite 600, Washington, DC 20006–8521. Telephone: (202) 502–7635 for Mr. Martinez, and (202) 502–7636 for Mr. McDermott, or via Internet:
jose.martinez@ed.gov
ed.mcdermott@ed.gov

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact persons listed under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting those persons. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov//legislation/FedRegister*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

Program Authority: 20 U.S.C. 1123.

Dated: April 8, 2002.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 02–8809 Filed 4–10–02; 8:45 am]

BILLING CODE 4001–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.200A]

Office of Postsecondary Education; Graduate Assistance in Areas of National Need Program; Notice Announcing Technical Assistance Workshops for Preparing Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Workshop: The Department of Education will conduct technical assistance workshops to assist prospective applicants in developing their applications for the FY 2003 competition under the Graduate Assistance in Areas of National Need (GAANN) program, authorized by title VII, part A, subpart 2, of the Higher Education Act of 1965, as amended, 20 U.S.C. 1135–1135e. The workshops will provide information on how to develop application narratives in accordance with the program selection criteria, as well as on program regulations and grant administration. Three technical assistance workshops have been scheduled for the Spring and Summer 2002. This will allow prospective applicants sufficient time to develop proposals for the FY 2003 competition. The workshops are open to both prospective applicants and current grantees.

Prospective applicants are advised that in September 2002 the Secretary plans to publish a notice inviting applications for FY 2003 awards, contingent upon Congress appropriating funds for this program. Workshops are free to the public. You may register by e-mail at: *ope_gaann_program@ed.gov*

Dates and Addresses:

Date: April 22, 2002.

Time: 8:30 a.m.–4:30 p.m.

Location: U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006.

Date: June 13, 2002.

Time: 8:30 a.m.–4:30 p.m.

Location: Arizona State University, The Graduate College, Tempe, AZ 85287–2803.

Date: July 18, 2002.

Time: 8:30 a.m.–4:30 p.m.

Location: Washington University, Graduate School of Arts and Sciences, St. Louis, MO 63130–4899.

Assistance to Individuals With Disabilities at the Technical Assistance Workshops

The technical assistance workshop sites are accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in a workshop (e.g., interpreting service, assistive listening device, or materials in an alternative format), notify one of the contact persons listed under **FOR FURTHER INFORMATION CONTACT** at least two weeks before the scheduled workshop date. Although we will attempt to meet a request we receive after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

FOR FURTHER INFORMATION CONTACT: Graduate Assistance in Areas of National Need Program Team: Annie Peake or Brandy Silverman, U.S. Department of Education, International Education and Graduate Programs Service, 1990 K Street, NW., 6th Floor, Room 6018, Washington, DC 20006–8521. Telephone: (202) 502–7700 or via Internet: *ope__gaann__program@ed.gov*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–800–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

Program Authority: 20 U.S.C. 1135.

Dated: April 8, 2002.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 02–8810 Filed 4–10–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Notice of Subsequent Arrangement.

SUMMARY: This notice is being issued under the authority of Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed ''subsequent arrangement'' under Article 6 paragraph 2 of the Agreement for Cooperation Between the Government of the United States of America and the Government of the Argentine Republic Concerning Peaceful Uses of Nuclear Energy.

This subsequent arrangement concerns the alteration in form or content of 311.52 grams of irradiated highly enriched uranium (HEU) dissolved in nitric acid currently stored in a hot cell as waste at the Argentine Nuclear Energy Commission (CNEA) Ezeiza Atomic Center near Buenos Aires. The reactor at the Ezeiza facility is in the process of converting to the use of low enriched uranium for molybdenum-99 production and needs to transfer the HEU for storage elsewhere. CNEA officials plan to precipitate the HEU from solution and retain the solid uranium in a stainless steel filtration unit. The uranium will be transported to and stored as a solid at CNEA's Waste Management area. All inventory changes will be made according to the safeguards agreements currently in effect.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Trisha Dedik,

Director, Office of Nonproliferation Policy.

[FR Doc. 02–8821 Filed 4–10–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

National Coal Council

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the National Coal Council Advisory Committee. Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, May 7, 2002, 9:00 a.m. to 12 N.

ADDRESSES: Westin Grand Hotel, 2350 M Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585. Phone: 202/586–3867.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the National Coal Council is to provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Tentative Agenda

- Call to order by Mr. Steven F. Leer, Chairman.
- Remarks by Secretary of Energy, Spencer Abraham (invited).
- Presentation by David Borlaugh, President, Lewis & Clark Bicentennial Celebration Activities, on the use of coal combustion by-products in building construction.
- Presentation by Dr. Alex Green, University of Florida, on co-firing biomass with coal.
- Presentation of Council's latest study on increasing electricity availability from coal-fired generation to the full Council for approval.
- Other Council business.
- Discussion of other business properly brought before the Committee.
- Public comment—10 minute rule.
- Adjournment.

Public Participation: The meeting is open to the public. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Margie D. Biggerstaff at the address or telephone number listed above. You must make your request for an oral statement at least five business days

prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule.

Transcripts: The transcript will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on April 5, 2002.

Rachel M. Samuel,

Deputy Advisory Committee, Management Officer.

[FR Doc. 02–8820 Filed 4–10–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket Nos. 02–10–NG, et al.]

Burlington Resources Canada Marketing Ltd. (Formerly Poco Marketing Ltd.), et al.; Orders Granting and Amending Authority To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during March 2002, it issued Orders granting and amending authority to import and export natural gas. These Orders are summarized in the attached appendix and may be found on the FE web site at *http://www.fe.doe.gov* (select gas regulation), or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on April 5, 2002.

Yvonne Caudillo,

Acting Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

Appendix

Orders Granting and Amending Import/Export Authorizations

DOE/FE AUTHORITY

Order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
1758	03–12–02	Burlington Resources Canada Marketing Ltd. (Formerly Poco Marketing Ltd.), 02–10–NG.	250 Bcf	.....	Import natural gas from Canada, beginning on March 31, 2002, and extending through March 30, 2004.
1759	03–13–02	Distribuidora de Gas Natural de Mexicali 02–08–NG.	18.3 Bcf	18.3 Bcf	Import natural gas from Canada, and export natural gas to Canada and Mexico, beginning on July 31, 2001, and extending through July 30, 2003.
1760	03–13–02	Northwest Natural Gas Company, 02–09–NG.	150 Bcf	150 Bcf	Import and export natural gas from and to Canada, beginning on May 1, 2002, and extending through April 30, 2004.
1761	03–14–02	RWE Trading Americas, Inc. 02–11–NG	75 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on April 1, 2002, and extending through March 31, 2004.
1623–B ..	03–25–02	Aquila Merchant Services, Inc. (Formerly Aquila, Inc.), 00–61–NG.	.....	.....	Amendment to blanket import and export authority reflecting name change.
1762	03–25–02	National Fuel Gas Distribution Corporation, 02–13–NG.	33.8 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on January 28, 2001, and extending through January 27, 2003.
1763	03–27–02	Numac Energy (U.S.) Inc., 02–12–NG	50 Bcf	.....	Import natural gas from Canada, beginning on October 15, 2002, and extending through October 14, 2004.

[FR Doc. 02–8819 Filed 4–10–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–107–000, et al.]

MNS Wind Company LLC, et al.; Electric Rate and Corporate Regulation Filings

April 1, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. MNS Wind Company LLC

[Docket No. EG02–107–000]

Take notice that on March 28, 2002, MNS Wind Company LLC (MNS) filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's regulations.

MNS is developing a wind-powered eligible facility with a capacity of 85 megawatts, which will be located at the Department of Energy's Nevada Testing Site, approximately 65 miles northwest of Las Vegas in Nevada.

Comment Date: April 22, 2002.

2. NRG Rockford II LLC

[Docket No. EG02–108–000]

Take notice that on March 28, 2002, NRG Rockford II LLC (NRG Rockford II) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to section 32 of the Public Utility Holding Company Act of 1935 (PUHCA) and Part 365 of the Commission's regulations.

As more fully explained in the application, NRG Rockford II states that it is a limited liability company that will

be engaged either directly or indirectly and exclusively in the business of owning and operating an electric generation facility located in Rockford, Illinois.

Comment Date: April 22, 2002.

3. ISO New England Inc.;

New England Power Pool

[Docket No. EL00–62–032] and Docket No. ER98–3853–010]

Take notice that on March 28, 2002, the New England Power Pool (NEPOOL) Participants Committee filed a supplement to its March 18, 2002 Report of Compliance, which proposed changes to NEPOOL Market Rule and Procedure No. 5 in order to effect compliance with the Commission's February 15, 2002 order in Docket Nos. EL00–62–032 and ER98–3853–010, *New England Power Pool,* 98 FERC ¶ 61,173 (2002). NEPOOL's March 28, 2002 supplement informs the Commission that no appeals have been filed concerning the Market Rule changes proposed in the Report of Compliance.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: April 18, 2002.

4. New York Independent System Operator, Inc.

[Docket No. ER01–2967–004]

Take notice that on March 28, 2002, the New York System Operator, Inc. (NYISO) filed revisions to Attachment S of its Open Access Transmission Tariff, which contains rules to allocate responsibility for the cost of new interconnection facilities, pursuant to the Commission's Order issued on February 27, 2002, in the above-captioned proceeding, and to correct typographical errors in Attachment S. The NYISO has requested an effective date of September 26, 2001, for the compliance filing, the effective date granted in the Commission's Order issued on February 27, 2002, in the above-captioned proceeding.

The NYISO has mailed a copy of this compliance filing to all persons that have filed interconnection applications or executed Service Agreements under the NYISO Open Access Transmission Tariff, to the New York State Public Service Commission, and to the electric utility regulatory agencies in New Jersey and Pennsylvania. The NYISO has also mailed a copy to each person designated on the official service list maintained by the Commission for the above-captioned proceeding.

Comment Date: April 18, 2002.

5. International Transmission Company, DTE Energy Company; International Transmission Company

[Docket Nos. ER01–3000–004, RT01–101–004 and EC01–146–004, and Docket No. EC02–28–000]

Take notice that on March 26, 2002, International Transmission Company and its corporate parent, DTE Energy Company (collectively, the DTE Parties), tendered for filing with the Federal Energy Regulatory Commission (Commission), a supplement to the compliance filing submitted to the Commission by the DTE Parties on January 22, 2002, in Docket Nos. ER01–3000, RT01–101 and EC01–146 (the Compliance Filing). See International Transmission Co., et al., 97 FERC ¶ 61,328 (2001). Specifically, the tendered filing revises and supplements Exhibit 3 of the Compliance Filing—Updated List of JOATT Transmission Service Agreements and Customer Index—in order to: (I) address certain concerns raised by intervenors; and (ii) include certain service agreements under the Joint Open Access Transmission Tariff between International Transmission and Michigan Electric Transmission Company that were filed with the Commission by International Transmission subsequent to January 22, 2002—the date of the Compliance Filing. A courtesy copy of this filing is being submitted to the Commission in Docket No. EC02–28.

Copies of the filing were served upon all parties on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

Comment Date: April 16, 2002.

6. ConAgra Trade Group, Inc.

[Docket No. ER02–672–001]

Take notice that on March 28, 2002, ConAgra Trade Group, Inc. filed its lst Revised Rate Schedule FERC No. 1.

Comment Date: April 18, 2002.

7. Crete Energy Venture, LLC

[Docket No. ER02–963–001]

Take notice that on March 28, 2002, Crete Energy Venture, LLC submitted for filing First Substitute Sheet Nos. 1 through 4 to its FERC Electric Tariff, Original Volume No. 1, in compliance with the delegated letter order issued in the above-captioned docket on March 15, 2002.

Comment Date: April 18, 2002.

8. GNE, LLC

[Docket No. ER02–1010–000]

Take notice that on March 27, 2002, GNE, LLC filed the substitute long-term Power Purchase and Sale Agreement (Agreement) between Maclaren Energy Inc. (Maclaren) and GNE, LLC (GNE). The Agreement, submitted as substitution of the previous filing made on February 13, 2002, in the above referenced docket, contains corrections made to page 4 of the Agreement and the original signatures of the parties involved.

Comment Date: April 17, 2002.

9. NRG Ilion LP

[Docket No. ER02–1395–000]

Take notice that on March 26, 2002, NRG Ilion LP (NRG Ilion) filed with the Federal Energy Regulatory Commission (Commission) A Notice of Succession pursuant to Section 35.16 of the Commission's regulations, 18 CFR 35.16. As A result of the name change, NRG Ilion is succeeding to the FERC Electric Tariff of Indeck-Ilion Limited Partnership, effective January 10, 2002. The tariff sheets filed by Indeck-Ilion Limited Partnership in Docket No. ER01–2431–000 are cancelled.

Comment Date: April 16, 2002.

10. NRG Rockford LLC

[Docket No. ER02–1396–000]

Take notice that on March 26, 2002, NRG Rockford LLC (NRG Rockford) filed with the Federal Energy Regulatory Commission (Commission) A Notice of Succession pursuant to Section 35.16 of the Commission's regulations, 18 CFR 35.16. As A result of the name change, NRG Rockford is succeeding to the FERC Electric Tariff of Indeck-Rockford, L.L.C., effective January 10, 2002. The tariff sheets filed by Indeck-Rockford, L.L.C. in Docket No. ER00–2069–000 are cancelled.

Comment Date: April 16, 2002.

Standard Paragraph

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 this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the

instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–8750 Filed 4–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–59–000, et al.]

Virginia Electric and Power Company, et al.; Electric Rate and Corporate Regulation Filings

April 2, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Virginia Electric And Power Company and Dominion Energy Marketing, Inc.

[Docket No. EC02–59–000]

Take notice that on March 29, 2002, Virginia Electric and Power Company (Dominion Virginia Power and Dominion Energy Marketing, Inc. (Dominion Marketing), (collectively, the Applicants) submitted a joint application under Section 203 of Federal Power Act to request authorization and approval for Dominion Virginia Power to transfer by assignment to Dominion Marketing obligation and rights in a Power Sales Agreement with the Borough of Tarentum.

The Applicants state that copies of this joint application have been served upon the Borough of Tarentum and the state regulatory commissions of Pennsylvania and Virginia.

Comment Date: April 19, 2002.

2. HC Pacific, LLC

[Docket No. EG02–109–000]

Take notice that on March 21, 2002, HC Pacific, LLC, a Delaware limited liability company, with its principal office located at 1221 Avenue of the Americas, New York, NY 10020, filed with the Federal Energy Regulatory Commission (Commission) an Application for determination that it is an exempt wholesale generator pursuant to Part 365 of the Commission's regulations and Section 32 of the Public Utility Holding Company Act of 1935, as amended.

Applicant states it is a Delaware limited liability company that will be engaged in owning an approximately 63 MW net naphtha and distillate oil-fired power plant located in Honakaa, in the northern coastal region of the island of Hawaii.

Comment Date: April 23, 2002.

3. Trition Power Michigan LLC

[Docket No. EG02–110–000]

Take notice that on March 29, 2002, Trition Power Michigan LLC (TP Michigan), a Delaware special purpose limited liability company, with its principal place of business at c/o Jackson Power Facility, 2219 Chapin Street, Jackson, Michigan 49203, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

TP Michigan states that it will be engaged directly and exclusively in the business of owning or operating, or both owning and operating, a 535 MW gas-fired combined cycle power generation facility located in Jackson, Michigan (Facility). Under a capacity sales and tolling agreement with Williams Energy Marketing & Trading Company, TP Michigan will sell the capacity exclusively at wholesale.

A copy of the filing was served upon the Securities and Exchange Commission, the Michigan Public Service Commission.

Comment Date: April 23, 2002.

4. Pacific Gas and Electric Company

[Docket No.ER02–1399–000]

Take notice that on March 28, 2002, Pacific Gas and Electric Company (PG&E) tendered for filing a Service Agreement for Wholesale Distribution Tariff (WDT Service Agreement) and a Generator Interconnection Agreement (GIA) between Georgia-Pacific West, Inc., (Georgia-Pacific)(collectively, Parties) a wholly owned subsidiary of Georgia-Pacific Corporation, and Pacific Gas and Electric Company, submitted pursuant to the PG&E Wholesale Distribution Tariff (WDT).

Copies of this filing have been served upon Georgia-Pacific, the California Independent System Operator Corporation and the CPUC.

Comment Date: April 18, 2002.

5. Illinois Power Company

[Docket No. ER02–1400–000]

Take notice that on March 28, 2002, Illinois Power Company (Illinois Power) filed with the Federal Energy Regulatory Commission (Commission) an unexecuted Interconnection and Operating Agreement with Prairie State Generating Company, LLC (Prairie State). The Agreement is subject to Illinois Power's Open Access Transmission Tariff.

Illinois Power requests an effective date of March 8, 2002 for the unexecuted Agreement and seeks a waiver of the Commission's notice requirement. Illinois Power has served a copy of the filing on Prairie State.

Comment Date: April 18, 2002.

6. Allegheny Power

[Docket No. ER02–1401–000]

Take notice that on March 28, 2002, West Penn Power Company, Monongahela Power Company and The Potomac Edison Company, all doing business as Allegheny Power filed a series of Transition Services Agreements with its wholesale customers. Allegheny Power recites that the Transition Services Agreements are needed to implement the PJM West arrangements and divide responsibility for the PJM bill between the customers and Allegheny Power.

Comment Date: April 18, 2002.

7. Nevada Power Company

[Docket No. ER02–1402–000]

Take notice that on March 28, 2002, Nevada Power Company tendered for filing an executed Interconnection and Operation Agreement between Nevada Power Company and Reliant Energy Bighorn, LLC. Nevada Power Company requests that this agreement be made effective as of March 6, 2002, which is the execution date for the Interconnection Agreement.

A copy of this filing, including the attached Interconnection Agreement, has been served upon Reliant Energy Bighorn, LLC, the Public Utilities Commission of Nevada, and the Nevada Bureau of Consumer Protection.

Comment Date: April 18, 2002.

8. PJM Interconnection, L.L.C.

[Docket No. RT01–98–005]

Take notice that on March 28, 2002, PJM Interconnection, L.L.C. (PJM) tendered for filing with the Federal Energy Regulatory Commission (Commission) conforming changes and minor revisions to the PJM Open Access Transmission Tariff (Tariff) and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement) to fully reflect all previous changes to the current version of the Tariff and Operating Agreement in the versions of

the Tariff and Operating Agreement that encompass both PJM and PJM West, which will take effect on April 1, 2002. PJM states that, except for certain conforming changes, typographical errors, and other minor changes, all of the submitted changes previously have been filed with the Commission, and have either been approved or are awaiting Commission action.

Allegheny Power System (Allegheny) joins in the filing, as to the Tariff sheets that contain Allegheny's rates, and asks that the Commission make such rates effective April 1, 2002, subject to refund.

Copies of this filing have been served on all PJM Members and the state electric regulatory commissions in the PJM control area and Allegheny service area.

Comment Date: April 29, 2002.

Standard Paragraph

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 this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–8751 Filed 4–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southeastern Power Administration

Proposed Rate Adjustment for the Jim Woodruff Project

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of public hearing and opportunities for review and comment.

SUMMARY: Southeastern Power Administration (Southeastern) proposes new rate schedules JW–1–G and JW–2–D to replace Wholesale Power Rate Schedules JW–1–F and JW–2–C for a three-year period from September 20, 2002 to September 19, 2005. Rate schedule JW–1–G is applicable to Southeastern power sold to existing preference customers in the Florida Power Corporation Service area. Rate schedule JW–2–D is applicable to Florida Power Corporation.

Opportunities will be available for interested persons to review the present rates, the supporting studies and to participate in a hearing and to submit written comments. Southeastern will evaluate all comments received in this process.

DATES: Written comments are due on or before July 10, 2002. A public information and public comment forum will be held at the Doubletree Hotel Tallahassee, in Tallahassee, Florida, at 10:00 a.m. on May 16, 2002. Persons desiring to speak at the forum must notify Southeastern at least seven (7) days before the forum is scheduled so that a list of forum participants can be prepared. Others present may speak if time permits. Persons desiring to attend the forum should notify Southeastern at least seven (7) days before the forum is scheduled. If Southeastern has not been notified by close of business on May 9, 2002, that at least one person intends to be present at the forum, the forum will be canceled with no further notice.

ADDRESSES: Written comments should be submitted to: Charles Borchardt, Administrator, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635–6711. The public comment Forum will meet at the Doubletree Hotel Tallahassee, 101 South Adams Street, Tallahassee, Florida, Phone (850) 224–5000.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Assistant Administrator, Finance and Marketing Division, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635–6711, (706)213–3800.

SUPPLEMENTARY INFORMATION: Existing rate schedules are supported by a May 2000 Repayment Study and other supporting data contained in FERC Docket No. EF00–3031–000. A repayment study prepared in March 2002 shows that the existing rates are not adequate to meet repayment criteria. A revised repayment study with a revenue increase of $331,000, or 5.7 percent, demonstrates that all costs are paid within their repayment life. The increase is primarily due to purchased power expenses associated with the rehabilitation of the project. Southeastern is proposing to raise rates to recover this additional $331,000.

In the proposed rate schedule JW–1–G, which is available to preference customers, the capacity charge has been raised from $5.51 per kilowatt per month to $5.79 per kilowatt per month. The energy charge has been increased from 15.46 mills per kilowatt-hour to 16.25 mills per kilowatt-hour. Rate schedule JW–2–D, available to Florida Power Corporation, raises the rate from 63 percent of the Company's fuel cost to 70 percent of the Company's fuel cost.

The studies are available for examination at 1166 Athens Tech Road, Elberton, Georgia, 30635–6711, as is the 2000 repayment study and the proposed Rate Schedules.

Dated: March 27, 2002.

Charles A. Borchardt,

Administrator.

[FR Doc. 02–8822 Filed 4–10–02; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OR–01–006; FRL–7169–9]

Adequacy Status of the State Implementation Plan Revision for Carbon Monoxide in the Medford Urban Growth Boundary, Medford, Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy determination.

SUMMARY: In this notice, EPA is notifying the public that we have found that the motor vehicle emissions budget submitted in the Revised Maintenance Plan for the Moderate Carbon Monoxide Maintenance Area for Medford, Oregon adequate 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 Rogue Valley Council of Governments, Oregon Department of Transportation, and the U.S. Department of Transportation are required to use the motor vehicle emissions budget in this submitted maintenance plan for future transportation conformity determinations.

DATES: This finding is effective April 26, 2002.

FOR FURTHER INFORMATION CONTACT: The finding will be available at EPA's conformity website: *http://www.epa.gov/oms/traq,* (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity''). You may also contact Wayne Elson, U.S. EPA, Region 10 (OAQ–107), 1200 Sixth Ave, Seattle WA 98101; (206) 553–1463 or *elson.wayne@epa.gov.*

SUPPLEMENTARY INFORMATION: Today's notice is simply an announcement of a finding that we have already made. EPA Region 10 sent a letter to The Oregon Department of Environmental Quality on March 21, 2002, stating that the motor vehicle emissions budget in the State Implementation Plan Revision for Carbon Monoxide in the Medford Urban Growth Boundary, Medford, Oregon is adequate.

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 budget is 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.

We have 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. 7401–7671q.

Dated: March 30, 2002.

Ronald Kreizenbeck,

Acting Regional Administrator, Region 10.

[FR Doc. 02–8827 Filed 4–10–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPT–2002–0008; FRL–6832–2]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from March 1, 2002 to March 15, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

DATES: Comments identified by the docket control number OPT–2002–0008 and the specific PMN number, must be received on or before May 13, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPT–2002–0008 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'','' Regulations and Proposed Rules, 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 OPT–2002–0008. 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, any test data submitted by the Manufacturer/Importer is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B– 607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

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 OPT–2002–0008 and the specific PMN number in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

3. *Electronically*. You may submit your comments electronically by e-mail to: ''oppt.ncic@epa.gov,'' or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPT–2002–0008 and the specific PMN number. 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 listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. 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. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from March 1, 2002 to March 15, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

In table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 46 PREMANUFACTURE NOTICES RECEIVED FROM: 03/01/02 TO 03/15/02

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0410	03/01/02	05/30/02	CBI	(S) Site limited intermediate	(S) Propanenitrile, 3-[bis(2-hydroxypropyl)amino]-
P–02–0411	03/04/02	06/02/02	CBI	(S) Intermediate in the manufacture of pmn is 999940 cas number 334001-69-3	(S) 2-propanol, 1,1′-[(3-aminopropyl)imino]bis-
P–02–0412	03/05/02	06/03/02	Solutia Inc.	(S) Drying resin for industrial coatings	(G) Epoxy resin ester
P–02–0413	03/05/02	06/03/02	CIBA Specialty Chemicals Corporation, Textile Effects	(S) Exhaust dyeing of polyester fibers	(G) Substituted alkylamino phenyl azo substituted isoindole
P–02–0414	03/04/02	06/02/02	CBI	(G) Reactive hot melt	(G) Reactive hot melt
P–02–0415	03/05/02	06/03/02	CBI	(G) Flame retardant	(G) Alkylene(diaryl phosphate)
P–02–0416	03/06/02	06/04/02	CBI	(G) An open non-dispersive use	(G) Alkyd resin
P–02–0417	03/06/02	06/04/02	CBI	(S) Polyurethane elastomers; polyurethane adhesives; polyurethane foams	(G) Polyol

I. 46 PREMANUFACTURE NOTICES RECEIVED FROM: 03/01/02 TO 03/15/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0418	03/06/02	06/04/02	Sartomer Company Inc.	(G) Additive for coatings and paints	(G) Mixture of aliphatic and aromatic amides
P–02–0419	03/06/02	06/04/02	Fibro Chem, Inc.	(S) Lubricant for synthetic fiber/yarn production	(S) Fatty acids, C_{16-18} and C_{18}-unsatd., branched and linear, ethoxylated propoxylated
P–02–0420	03/07/02	06/05/02	CBI	(G) Adhesive for cellulosic surfaces	(G) Modified starch
P–02–0421	03/07/02	06/05/02	CBI	(G) Emulsifier	(G) Substituted polyoxyethylene
P–02–0422	03/08/02	06/06/02	CBI	(G) Lubricant additive	(G) Molybdenum alkydithiocarbamate
P–02–0423	03/06/02	06/04/02	CBI	(G) Colorant for inks; open, non-dispersive use	(G) Complex halogenated salt of polyaromatic alkane condensate, ethylated
P–02–0424	03/08/02	06/06/02	CBI	(G) Catalyst	(G) Catalyst
P–02–0425	03/11/02	06/09/02	CBI	(G) Paper sizing agent	(G) Cyclohexene-carboxylic acid, [(di-propenylamino)carbonyl]-,sodium salt, reaction products with pentafluoroiodoethane-tetrafluoro-ethylene telomer, ammonium salts
P–02–0426	03/08/02	06/06/02	CBI	(G) Lubricant additive	(G) Molybdenum alkyldithiocarbamate
P–02–0427	03/08/02	06/06/02	CBI	(G) Lubricant additive	(G) Molybdenum alkyldithiocarbamate
P–02–0428	03/11/02	06/09/02	PRC-Desoto International, a PPG Industries Company	(S) Polymer for adhesives and sealants	(G) Alkoxysilane terminated polyether polymer
P–02–0429	03/11/02	06/09/02	CBI	(G) Destructive use	(G) Sodium salt of neopentylglycol diester
P–02–0430	03/11/02	06/09/02	CBI	(G) Open, non-dispersive	(G) Alkyd resin
P–02–0431	03/11/02	06/09/02	Crompton Corporation	(G) Catalyst	(S) Stannane, dimethylbis(oleoyloxy)-
P–02–0432	03/11/02	06/09/02	Clariant LSM (America) Inc.	(S) Intermediate for manufacture of photo developing chemicals	(G) Benzyl ethoxy imidazoldine derivative
P–02–0433	03/11/02	06/09/02	Nagase America Corporation	(G) Flame retardant	(G) Oligomeric (2-chloroisopropyl alkylene) phoshate
P–02–0434	03/12/02	06/10/02	Solutia Inc.	(S) Curing resin for industrial can coatings	(G) Polyester resin
P–02–0435	03/12/02	06/10/02	Solutia Inc.	(S) Binder for industrial coatings	(G) Unsaturated polyester resin
P–02–0436	03/12/02	06/10/02	CBI	(S) Intermediate for polyurethane polymers	(G) Alkyd amide polyol
P–02–0437	03/12/02	06/10/02	CBI	(G) Treatment of fibers, textiles and non-woven substrates such as tissues and wipes providing a smooth hydrophue finish	(G) Siloxanes and silicones, d-me, 3-hydroxypropyl me, ethoxylated propoxylated benzoate ester
P–02–0438	03/11/02	06/09/02	CBI	(G) Intermediate for electrical insulation coating	(G) Polyesterimide resin
P–02–0439	03/12/02	06/10/02	Houghton International Inc.	(S) Lubricant additive	(G) Alkanolamine carboxylate salts
P–02–0440	03/12/02	06/10/02	Houghton International Inc.	(S) Lubricant additive	(G) Alkanolamine carboxylate salts
P–02–0441	03/12/02	06/10/02	Houghton International Inc.	(S) Lubricant additive	(G) Alkanolamine carboxylate salts
P–02–0442	03/12/02	06/10/02	Houghton international inc.	(S) Lubricant additive	(G) Alkanolamine carboxylate salts
P–02–0443	03/12/02	06/10/02	Houghton International Inc.	(S) Lubricant additive	(G) Alkanolamine carboxylate salts
P–02–0444	03/12/02	06/10/02	Houghton International Inc.	(S) Lubricant additive	(G) Alkanolamine carboxylate salts
P–02–0445	03/12/02	06/10/02	Houghton International Inc.	(S) Lubricant additive	(G) Alkanolamine carboxylate salts
P–02–0446	03/12/02	06/10/02	Houghton International Inc.	(S) Lubricant additive	(G) Alkylamine carboxylate salts
P–02–0447	03/12/02	06/10/02	Houghton International Inc.	(S) Lubricant additive	(G) Alkylamine carboxylate salts
P–02–0448	03/12/02	06/10/02	Houghton International Inc.	(S) Lubricant additive	(G) Alkylamine carboxylate salts
P–02–0449	03/12/02	06/10/02	Houghton International Inc.	(S) Lubricant additive	(G) Alkylamine carboxylate salts
P–02–0450	03/14/02	06/12/02	CBI	(G) Additive, open, non-dispersive use	(G) Polyether modified polyisocyanate, reaction product with diamine
P–02–0451	03/13/02	06/11/02	CBI	(S) Down hole drilling application	(G) Amphoteric cellulose ether
P–02–0452	03/13/02	06/11/02	BASF Corporation	(G) Pick-up truck bed liner	(G) Isocyanate prepolymer

I. 46 PREMANUFACTURE NOTICES RECEIVED FROM: 03/01/02 TO 03/15/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0453	03/13/02	06/11/02	BASF Corporation	(G) Pick-up truck bed liner	(G) Isocyanate prepolymer
P–02–0454	03/15/02	06/13/02	CBI	(S) Electrodeposition coatings	(G) Amine functional epoxy resin salted with an organic acid
P–02–0455	03/14/02	06/12/02	Gharda Polymers USA Inc.	(G) As such, or with glass fiber and carbon fiber compounding/for industrial applications, such as valve seat, seal, etc., medical for hearing aids, analytical equipment/medical implants/food contact materials	(G) Polyetherether ketone (peek)

In table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 25 NOTICES OF COMMENCEMENT FROM: 03/01/02 TO 03/15/02

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0914	03/01/02	10/11/01	(G) Titanium phosphinate complex
P–00–1046	03/12/02	03/04/02	(G) Organic zirconium compound
P–00–1229	03/11/02	02/20/02	(G) Acrylic copolymer
P–01–0153	03/12/02	02/22/02	(G) Hydrocarbyl zirconium substance
P–01–0183	03/14/02	03/08/02	(G) Thiazine-indigo
P–01–0204	03/14/02	02/22/02	(S) Siloxanes and silicones, lauryl me
P–01–0304	03/12/02	02/19/02	(G) Polyureapolyurethane polyol
P–01–0312	03/13/02	01/09/02	(G) Carbobicycle aldehyde
P–01–0448	03/07/02	02/25/02	(G) Silane terminated polyurethane prepolymer
P–01–0634	03/07/02	02/21/02	(G) Polyurethane elastomer
P–01–0664	03/04/02	02/12/02	(G) Polytetrahydrofuran, polymer with a diisocyanate, a diamine and an amine
P–01–0754	03/06/02	01/24/02	(G) Polyol
P–01–0761	03/11/02	01/24/02	(G) Polyol
P–01–0815	03/11/02	02/05/02	(G) 1,3,5-naphthalenetrisulfonic acid, [[[[[substituted alkyl amino]-6-halogen-1,3,5-triazin-2-yl]amino]substituted]azo]-, trisodium salt
P–01–0827	03/07/02	02/21/02	(G) Alkyl halide
P–01–0839	03/13/02	02/25/02	(G) Unsaturated polyester
P–01–0913	03/05/02	02/07/02	(S) Ethanedioic acid, diethyl ester, polymer with 1,2-ethanediamine
P–02–0009	03/14/02	03/05/02	(S) Silsesquioxanes, 2 (or 3)-methylbutyl, hydroxy-terminated
P–02–0034	03/11/02	02/04/02	(G) Phenolic resin
P–02–0097	03/04/02	02/20/02	(G) Metallic diacrylate
P–02–0099	03/11/02	03/02/02	(G) Polyester resin
P–02–0103	03/06/02	02/26/02	(G) Polyimide terminated, polyester / polyamide graft to styrene / acrylic polymer
P–94–0356	03/14/02	05/09/96	(G) N,n-dimethyl alkylamine
P–94–1216	03/11/02	02/13/02	(G) Substituted naphthalene sulfonic acid, alkali salt
P–99–0758	03/04/02	01/16/02	(G) Gas generant

List of Subjects

Environmental Protection, Chemicals, Premanufacturer Notices.

Dated: April 2, 2002.

Mary Louise Hewlett,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 02–8830 Filed 4–10–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Media Security and Reliability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons of the first meeting of the Media Security and Reliability Council (Council) under its charter dated March 26, 2002. The meeting will be held at the Federal Communications Commission in Washington, DC.

DATES: Friday, May 17, 2002 at 10:00 a.m. to 12:00 p.m.

ADDRESSES: Federal Communications Commission, 445 12th St. SW., Room TW–C305, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Barbara Kreisman at 202–418–1605 or TTY 202–418–7172

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to bring together leaders of the broadcast and multichannel video programming distribution industries and experts from consumer, public safety and other organizations to explore and recommend measures that would

enhance the security and reliability of media facilities and services.

The Council will review its charter and discuss the establishment of working groups.

The Council may also discuss such other matters as come before it at the meeting.

Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. Admittance, however, will be limited to the seating available. The public may submit written comments before the meeting to Barbara Kreisman, the Commission's Designated Federal Officer for the Media Security and Reliability Council, by e-mail (*bkreisma@fcc.gov*) or U.S. mail (2–A666, 445 12th St. SW., Washington, DC 20554). Real Audio and streaming video Access to the meeting will be available at *http://www.fcc.gov/.*

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–8799 Filed 4–10–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Network Reliability and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons of the second, third and fourth meetings of the Network Reliability and Interoperability Council (Council) under its charter renewed as of December 26, 2001. The meetings will be held at the Federal Communications Commission in Washington, DC.

DATES: Friday, June 14, 2002 at 10 a.m. to 1 p.m.; September 13, 2002 at 10 a.m. to 1 p.m.; December 6, 2002 at 10 a.m. to 1 p.m.

ADDRESSES: Federal Communications Commission, 445 12th St. SW., Room TW–C305, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp at 202–418–1096 or TTY 202–418–2989

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to bring together leaders of the telecommunications industry and telecommunications experts from academic, consumer and other organizations to explore and recommend measures that will enhance network reliability, network security, and network integrity.

The Council will discuss the progress of working groups that are addressing the topics that are contained in the Council's charter and any additional issues that may come before it.

Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. Admittance, however, will be limited to the seating available. The public may submit written comments before the meeting to Jeffery Goldthorp, the Commission's Designated Federal Officer for the Network Reliability and Interoperability Council, by email (*jgoldtho@FCC.GOV*) or U.S. mail (7–A325, 445 12th St. SW., Washington, DC 20554). Real Audio and streaming video Access to the meeting will be available at *http://www.fcc.gov/*

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–8798 Filed 4–10–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission

DATE & TIME: *Tuesday, April 16, 2002 at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: *Wednesday, April 17, 2002 at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor)

STATUS: This hearing will be open to the public.

MATTER BEFORE THE COMMISSION: Proposed Voting Systems Standards (VSS).

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–8973 Filed 4–9–02; 3:03 pm]

BILLING CODE 6715–01–M

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (''FTC'').

ACTION: Notice of disposition of comment.

SUMMARY: The Federal Trade Commission (FTC) has submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (PRA) information collection requirements contained in its Funeral Industry Practices Rule (''Funeral Rule'' or ''Rule''). The FTC received a public comment on its PRA burden estimates, which were published previously in the **Federal Register**. The FTC is summarizing in this notice its reevaluation of those prior estimates in light of the public comment, and is seeking to extend through March 30, 2005 the current PRA clearance for information collection requirements contained in the Rule. That clearance expires on September 30, 2002.

DATES: Comments must be submitted on or before May 13, 2002.

ADDRESSES: Send written comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503, ATTN: Desk Office for the Federal Trade Commission (comments in electronic form should be sent to *oira_docket@omb.eop.gov*), and to the Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580 (comments in electronic form should be sent to *Funeralrulepaperwork@ftc.gov*). All comments should be captioned ''Funeral Rule: Paperwork comment,'' as prescribed below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Myra Howard, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Room H–238, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–2047.

SUPPLEMENTARY INFORMATION: The Funeral Rule ensures that ensures that consumers who are purchasing funeral goods and service have accurate information about the terms and conditions (especially prices) for such goods and services. The Rule requires that funeral providers disclose this information to consumers and maintain records to facilitate enforcement of the Rule.

Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. On November 21, 2001, the FTC sought comment on the information collection requirements associated with the Funeral Rule, 16 CFR part 453 (OMB Control Number: 3084–0025). See 66 FR 58492. The FTC received one public comment, from the National Funeral Directors Association, which staff learned of only following its sending an information clearance request package to OMB for review (pursuant to OMB regulations that implemented the PRA, 5 CFR part 120), contemporaneous with its publishing a related notice to that effect in the **Federal Register** on January 25, 2002. See 67 FR 3709.

OMB granted the FTC an interim extension on March 22, 2002 running through September 30, 2002, and requested that the FTC publish revised burden estimates resulting from the comment received and further staff consultations with other industry representatives. The FTC will also, upon request, make available its complete analysis/response to comments it transmitted to OMB on March 21, 2002.

While the primary purpose of this notice is to summarize the revised burden estimates, FTC staff and OMB will consider additional comments before OMB acts on the FTC's request to extend the clearance for a three year period to March 30, 2005.[1] These comments should be directed to the addresses shown above and submitted within 30 days following publications of this notice. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail addresses for the FTC and OMB, respectively: *Funeralrulepaperwork@ftc.gov* and *oira_docket@omb.eop.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR section 4.9(b)(6)(ii)). The summary of staff's revised PRA analysis regarding the Rule follows:

Estimated annual hours burden: The estimated burden associated with the collection of information required by the Rule 22,300 hours for recordkeeping, 104,649 hours for disclosures, and 44,600 hours for associated training, for a total of 172,000 hours, rounded to the nearest thousand. This estimate is based on the number of funeral providers (approximately 22,300), the number of funerals and cremations annually (approximately 2.3 millions), the time needed to fulfill the information collection tasks required by the Rule, and miscellaneous other factors detailed below.

Recordkeeping: The Rule requires that funeral providers retain copies of price lists and statements of funeral goods and services selected by consumers. Based on a maximum average burden of one hour per provider per year for this task, the total burden for the 22,300 providers is 22,300 hours. This estimate is unchanged from staff's previously published estimate.

Disclosure: The Rule requires that funeral providers (1) maintain current price lists for funeral goods and services, (2) provide written documentation of the funeral goods and services selected by consumers making funeral arrangements, and (3) provide information about funeral prices in response to telephone inquiries.

Maintaining current price lists requires that funeral providers revise their price lists from time to time through the year to reflect price changes. Based on a maximum average burden of 2½ hours per provider per year for this task (1½ hours per year for a funeral director and 1 hour per year for an administrative assistant), the total burden for 22,300 providers is 55,750 hours. This estimate has been raised from the FTC's prior estimate of 44,600 hours (previously based on an assumed 2 hours per provider).

Staff estimates that 13% of funeral providers prepare written documentation of funeral goods and services selected by consumers. Support for this estimate lies in the original rulemaking record, which indicated that 87 percent of funeral providers provided written documentation of funeral arrangements, even absent the Rule's requirements.[2] Based on this estimate and the approximate total number of funeral homes, the Rule imposes a disclosure burden on 2,899 providers (13 percent of 22,300 providers). These providers are typically the smallest funeral homes. The disclosure requirement can be satisfied through the use of a standard form (an example of which is available to the industry in the Compliance Guide to the Funeral Rule). Based on an estimation that these smaller homes arrange, on average, approximately 20 funerals per year and that it would take each of them about 3 minutes to record prices for each consumer on the standard form, FTC staff estimates that the total burden associated with this disclosure requirement is one hour per provider not already in compliance, for a total of 2,899 hours.

The Funeral Rule also requires funeral providers to answer telephone inquiries about the provider's offerings or prices. Prior industry data indicated that only about nine percent of funeral purchasers make telephone inquiries, with each call lasting an estimated three minutes. The follow-up industry input staff obtained, however, yielded different conclusions and estimates, though the input was mixed. Staff received estimates ranging from as low as 5 minutes of price-related discussion per telephone inquiry to a high of 12–15 minutes per inquiry. Accordingly, in a balancing of this input, the FTC is revising its estimates to 10 minutes per inquiry. In addition, the combined responses received suggest a higher frequency of telephone inquiries about pricing than previously estimated, now increased to 12%. It is reasonable to assume that, at least in large urban areas where a relatively greater number and concentration of funeral homes may be found, price competition and related inquiries would be the norm.[3] With an industry volume of approximately 2,300,000 funerals and cremations per year, total burden hours relating to price-related disclosures would thus be 46,000 hours.

Training: In addition to the recordkeeping and disclosure-related

[1] The 3-year clearance is tied to the date the OMB clearance would have expired but for the interim extension.

[2] The original version of the Funeral Rule required that funeral providers retain a copy of and give each customer a separate ''Statement of Funeral Goods and Services Selected.'' The 1994 amendments to the Rule eliminated that requirement, allowing instead for such disclosures to be incorporated into a written contract, bill of sale, or other record of a transaction that providers use to memorialize sales agreements with customers.

[3] A slowly but steadily increasing minority of funeral homes advertise their prices (e.g., newspapers, other publications, and the Internet). These homes presumably will receive price-related inquiries less frequently than would those who do not advertise their prices.

tasks noted above, funeral homes may also have training requirements specifically attended to the Rule. While staff believes that annual training burdens associated with the Rule should be minimal,[4] it has in light of the comment received provided for training in its revised estimates. It estimates that, industry-wide, funeral homes should incur no more than 44,600 hours in Rule-associated training each year. This is based on an assumption that an ''average'' funeral home consists of approximately five employees (full-time and part-time employment combined), but with no more than four of them having tasks specifically associated with the Funeral Rule.[5] Allowing for the input staff received regarding the time necessary, if at all, for annual training specific to the Rule, staff estimates that each of the four employees (directors and a clerical employee) per firm would each require ½ hour, at most, per year, for such training. Thus, total estimated time for training is 44,600 hours (4 employees per firm at ½ hour each for 22,300 firms).

Estimated annual cost burden: $5,071,000, rounded ($3,027,970 in labor costs and $2,043,115 in non-labor costs).

Labor costs: Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. Staff's estimates below include, where applicable, apportionments of $30, $20, and $15 per hour for various funeral director positions and $12.50 per hour for clerical tasks.[6] The hourly rates used below are averages.

1. Recordkeeping: $278,750 (22,300 funeral homes × 1 hour per year × $12.50 per hour).

2. Maintaining and updating price lists: $1,282,250 [(1½ hours per year × $30 per hour per funeral director) + (1 hour per year × $12.50 per administrative assistant) × 22,300 funeral homes].

3. Completing statement of funeral goods and services selected: $86,970 (2,899 hours × $30 per hour).

4. Disclosing prices over the phone: $1,380,000 (46,000 hours × $30 per hour).

Capital or other non-labor costs:

1. Copying or printing price lists: $1,150,000 (4,600,000 funeral price lists at 25 cents per page).

In light of the comment received, staff's sampling of industry sources, and its consultation with a national copying chain, staff revises its estimate to 25 cents per page. Moreover, the commenter suggested a 2 to 1 correlation between the number of copies of price lists a funeral home prints and distributes in a given year and the volume of its funeral ''calls'' (i.e., funerals and cremations). Applied to an industry volume of 2,300,000 funerals per year results in a total of 4,600,000 price lists used per year. At 25 cents per page, the revised estimate now increases to $1,150,000.

2. Printing statement of funeral goods and services selected: $28,990 (2,899 funeral homes × 20 funerals or cremations per year × 2 pages per form × 25 cents per page)

Staff will continue to conservatively assume that some funeral homes (13%) would not prepare such statements absent the Rule. Nonetheless, as noted above, staff has revised upward the estimated cost per page to 25 cents. Accordingly, its revised estimate of total cost to prepare the statement of funeral goods and services is $28,990.

3. Training: $864,125 [$30+$20+$15+12.50 (hourly wage of 3 funeral directors at varying levels and one clerical employee per home) × ½ hour per year per employee for Rule-related training × 22,300 funeral homes].

The changes in staff's estimates are summarized in the tables below.

CHANGES IN FTC COST ESTIMATES

Activity	Prior FTC estimate ($)	Revised FTC estimate ($)
1. Recordkeeping of Price Lists	$223,000	$278,750
2. Maintaining and Updating Price Lists	2,620,250	1,282,250
3. Completing Statement of Funeral Goods and Services Selected	217,425	86,970
4. Disclosing Prices Over the Phone	776,250	1,380,000
5. Copying or Printing of Price Lists	334,500	1,150,000
6. Printing Statement of Funeral Goods and Services Selected	5,798	28,990

[4] Rule compliance is generally included in continuing education requirements for licensing and voluntary certification programs. Moreover, the FTC has provided its Compliance Guide to all funeral providers at no cost, and additional copies are available on the FTC Web site or by mail.

[5] According to one nonpublic survey by an industry association, approximately 70% of its members that responded were from funeral homes with 1–5 employees. Moreover, according to a recent NFDA survey, the median number of full-time employees within member homes was 3, as was the case for part-time employees. *National Funeral Directors Association 2001 Compensation Survey,* October 2001. Assuming that 3 part-time employees equates to 1.5 full-time employee work-years, that, combined with 3 full-time employees, adds up to almost 5 full-time employees per firm. But, this composition also includes employees whose tasks are not directly associated with Rule compliance. The NFDA survey responses indicate that funeral home employee categories, beyond management and professional positions (i.e., owner or managing and non-owner/non-managing funeral directors), consist of: (a) driver; (b) receptionist; (c) maintenance worker; (d) clerical; and (e) bookkeeper. Of those categories, the ones reported as applicable in the greatest frequency among reporting firms were drivers, maintenance, and clerical. However, besides management, the only pertinent employee category with regard to compliance with the Rule would be the clerical category. Extrapolating from that input, staff estimates that an ''average''-size firm would include no more than one clerical employee. Depending on size and/or other factors, a funeral home may be run by as few as one owner/manager funeral director to multiple directors of various compensation levels. The NFDA survey, for example, lists as director sub-categories ''owner/manager,'' ''mid-level manager,'' ''funeral director/embalmer,'' ''funeral director only,'' among others. Staff believes that a fairly representative composition of a five-person home (but with only four persons having tasks associated with the Rule) would include an owner/manager, funeral director/embalmer, and ''funeral director only'' (along with one clerical employee).

[6] According to the *National Compensation Survey, Wages in the United States, 2000,* U.S. Department of Labor, Bureau of Labor Statistics, the national average hourly wage of a funeral director is $24.03. The NFDA survey, however, lists several sub-categories of funeral home directors, including ''owner/manager,'' ''mid-level manager,'' ''funeral director/embalmer,'' and ''funeral director only.'' *See National Funeral Directors Association 2001 Compensation Survey.* Staff believes that a fairly representative composition of a five-person home would include these three sub-categories of directors. Based on data within the NFDA survey, their upper-tier median hourly wages are $33.65, $19.63, and $15.14, respectively. For simplicity, however, staff has rounded those amounts to $30, $20, and $15 in its estimates. Moreover, except where otherwise indicated under its cost estimates, staff will conservatively assume the activities described are performed by a director who is also an owner and/or manager, and thus apply the $30 per hour estimate.

The mean hourly wage of administrative support personnel for various degrees of potentially applicable sub-categories (copy and office machine operators, stock and inventory clerks, general office clerks, and administrative clerks ''not elsewhere classified'') ranges from $8.86–$12.22 per hour. These figures include straight wages, ''hazard'' pay, and cost-of-living adjustments. Allowing for other incidental benefits excluded and this additional industry assessment, staff believes that a representative clerical hourly wage to be $12.50.

CHANGES IN FTC COST ESTIMATES—Continued

Activity	Prior FTC estimate ($)	Revised FTC estimate ($)
7. Training Licensed and Non-Licensed Funeral Home Staff	0.00	864,125
Total	4,177,223	5,071,085

CHANGES IN FTC HOURS ESTIMATES

Activity	Prior FTC stimate	Revised FTC estimate
1. Recordkeeping of Price Lists	22,300	22,300
2. Maintaining and Updating Price Lists	44,600	55,750
3. Completing Statement of Funeral Goods and Services Selected	2,899	2,899
4. Disclosing Prices Over the Phone	10,350	46,000
5. Copying or Printing of Price Lists		
6. Printing Statement of Funeral Goods and Services Selected		
7. Training Licensed and Non-Licensed Funeral Home Staff	0	44,600
Total	80,149	171,549

William E. Kovacic,

General Counsel.

[FR Doc. 02–8811 Filed 4–10–02; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Notice of Availability of the Draft Environmental Impact Statement (DEIS) For the Future Master Plan Development for the Centers for Disease Control (CDC) in Chamblee, GA

Pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, and the President's Council on Environmental Quality Regulations (40 CFR 1500–1508), as implemented by General Services Administration (GSA) Order PBS P 1095.4D, GSA announces the availability of the Draft Environmental Impact Statement (DEIS) for the master plan and the proposed development and future build out for the CDC in Chamblee, Georgia. The proposed action includes the expansion of facilities and will include additional buildings, parking structures, and infrastructure on Government-owned property located in Chamblee located south of Tucker Road between Peachtree Dekalb Airport and Buford Highway. The DEIS examines the impacts of this proposed development on the natural and human environment to include impacts to wetlands, floodplains, traffic, and other potential impacts identified by the community through the scoping process.

The DEIS addresses the potential impacts of two alternatives: The Proposed Action (Development Alternative), and No-Action Alternative (meet facility requirements without full development on site). A public meeting has been scheduled for the evening of Monday April 29th at the Chamblee community center at 6 p.m. GSA has solicited community input throughout this process, and will incorporate community comments into the decision process. As part of the public process, GSA solicits comments in writing at the following address: Mr. Phil Youngberg, Environmental Manager (4PT), General Services Administration (GSA), 77 Forsyth Street, Suite 450, Atlanta, GA 30303, or FAX: Mr. Phil Youngberg at 404–562–0790. Comments should be submitted in writing no later than May 15, 2002.

Dated: April 2, 2002.

Phil Youngberg,

Environmental Manager.

[FR Doc. 02–8757 Filed 4–10–02; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Board on Radiation and Worker Health (ABRWH).

Times and Dates: 9 a.m.–4:30 p.m., May 2, 2002, 8:30 a.m.–4 p.m., May 3, 2002.

Place: Washington Court Hotel on Capitol Hill, 525 New Jersey Avenue, NW., Washington, DC 20001, telephone 202/628–2100, fax 202/879–7938.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 65 people.

Background: The Advisory Board on Radiation and Worker Health (''the Board'') was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which are being promulgated by Department of Health and Human Services (HHS), advice on methods of dose reconstruction which have been promulgated as an interim final rule, evaluation of the validity and quality of dose reconstructions conducted by the National Institute for Occupational Safety and Health (NIOSH) for qualified cancer claimants, and advice on the addition of classes of workers to the Special Exposure Cohort.

In December 2000, the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to the Centers for Disease Control and Prevention (CDC). NIOSH implements this responsibility for CDC.

The charter was signed on August 3, 2001 and in November 2001, the President completed the appointment of an initial roster of 10 Board members. The initial tasks of the Board will be to review and provide advice on the proposed and interim rules of HHS.

Purpose: This board is charged with (a) providing advice to the Secretary, HHS on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS advises the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to Be Discussed: Agenda for this meeting will focus on the draft Special Exposure Cohort Petitioning Process Guidelines, other Board business, and Board discussion. Agenda items are subject to change as priorities dictate.

FOR MORE INFORMATION CONTACT: Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/841–4498, fax 513/458–7125.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 3, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–8838 Filed 4–10–02; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–228]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as 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.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. This is necessary to ensure compliance with the statutorily mandated completion date of July 1, 2002. In particular, we cannot reasonably comply with the normal clearance procedures because the ACR worksheets need to be disseminated to the plans by May 1, 2002 in order to allow the industry to prepare and submit the information on their 2003 pricing packages by July 1, 2002. Historically, M + Cs plans need 2–3 months time to plan and work with their actuaries to complete the worksheets. CMS is requesting OMB review and approval of this collection by 4/30/2002, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by 4/29/2002. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Collection Request: Revision of currently approved collection.

Title of Information Collection: Adjusted Community Rate.

Form No.: CMS–R–228 (OMB# 0938–0742).

Use: Under Part C of the Social Security Act (ACT), a Medicare + Choice (M + C) organization is required to offer a benefit package that is approved and priced properly to all Medicare beneficiaries residing in the service area. This form is used by M + C organization to price its benefit packages.

Frequency: Annually.

Affected Public: Business or other-for-profit, Not-for-profit institutions and State, Local or Tribal Government.

Number of Respondents: 700.

Total Annual Responses: 700.

Total Annual Hours: 66,500.

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS'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 CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by 4/29/2002: Centers for Medicare and Medicaid Services, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, Fax Number: (410) 786–0262, Attn: Melissa Musotto, and, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Allison Eydt, CMS Desk Officer.

Dated: April 4, 2002.

John P. Burke III,

CMS Reports Clearance Officer, CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–8823 Filed 4–10–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–855]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as 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.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. This is necessary to ensure compliance with 5 U.S.C. 1395g and 42 CFR 413.20 and 413.24. We cannot reasonably comply with the normal clearance procedures because the approval for this collection lapsed; having approval for the forms is vital to the Medicare program. If we are unable to require specific information from providers and suppliers that want to enroll in Medicare in order to participate in the program, we will have little control over what information they give us without going through a potentially long and drawn out process by going back repeatedly to gather necessary information from the potential providers and suppliers. The alternative would be to accept any supplier or provider for participation in the program, which might result in having otherwise unacceptable providers and suppliers furnishing services to our beneficiaries.

CMS is requesting OMB review and approval of this collection by April 26, 2002, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by April 22, 2002. We published a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements on February 8, 2002. We will submit the requirements for OMB review and an extension of this emergency approval during the 180-day approval period.

Type of Information Collection Request: Reinstatement of a previously approved collection.

Title of Information Collection: Medicare Federal Health Care Programs Provider/Supplier Enrollment Application.

Form No.: HCFA–855 (OMB# 0938–0685).

Use: This information is needed to enroll providers and suppliers into the Medicare program by identifying them, pricing and paying their claims, and verifying their qualifications and eligibility to participate in Medicare.

Frequency: Initial enrollment/recertification and every three years.

Affected Public: Business or other for-profit, Individuals or Households, and Not-for-profit institutions.

Number of Respondents: 1,300,000.

Total Annual Responses: 604,000.

Total Annual Hours: 435,000.

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS'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 CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by April 22, 2002.

Centers for Medicare and Medicaid Services, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, Fax Number: (410) 786–0262, Attn: Julie Brown, CMS–855, and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Allison Eydt, CMS Desk Officer.

Dated: April 3, 2002.

John P. Burke, III,

CMS Reports Clearance Officer, CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–8824 Filed 4–10–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF/CB–2002–01]

Announcement of the Availability of Financial Assistance and Request for Applications To Support Adoption Opportunities Demonstration Projects, the Abandoned Infants Assistance Resource Center, Migrant and Tribal Community-Based Family Resource and Support Programs, and a Community-Based Family Resource and Support Resource Center

AGENCY: Administration on Children, Youth and Families (ACYF), ACF, DHHS.

ACTION: Notice.

Statutory Authority and Catalog of Federal Domestic Assistance (CFDA) Numbers

Adoption Opportunities: Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, as amended, [42 USC 5111] CFDA: 93.652.

Children's Health Act of 2002: Section 330G Subpart I of part D of title III of the Public Health Service Act, as amended [42 USC 254c–7] CFDA: 93.254.

Abandoned Infants: Section 101 of the Abandoned Infants Assistance Act, as amended [42 USC 670 note] CFDA: 93.551.

Community-Based Family Resource and Support: Title II, Sec. 201 of the Child Abuse Prevention and Treatment Act, as amended [42 USC 5116 *et seq.*] CFDA: 93.590.

SUMMARY: The Children's Bureau (CB) within the Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF) announces the availability of fiscal year (FY) 2002 funds for competing new Adoption Opportunities Program and Abandoned Infants Assistance. Funds from the Adoption Opportunities Program are designed to provide support for demonstration projects that facilitate the elimination of barriers to adoption and provide permanent loving homes for children who would benefit from adoption, particularly children with special needs. Funds from the Adoption Opportunities Program and the Children's Health Act of 2002 support the National Adoption Internet Photolisting Service Information Exhcange and Special Needs Adoption Recruitment and Adoptive Family Support Project. Funds from section 101 of the Abandoned Infants Assistance Act, as amended [42 USC 670 note] support the National Resource Center for Programs Serving Abandoned Infants and Infants at Risk of Abandonment and Their Families. The Center provides State and local, private, non-profit agencies and organizations with access to information, methods, techniques and strategies for establishing an effective, coordinated range of comprehensive social and health care services to infants and young children and their families impacted by substance abuse and/or HIV infection. Funds from Title II, Sec. 201 of the Child Abuse Prevention and Treatment Act (CAPTA) support the Community-Based Family Resource and Support resource center and programs.

DATES: The closing time and date for receipt of applications is 4:30 p.m. (Eastern time Zone) on May 30, 2002. Mailed or hand-carried applications received after 4:30 p.m. on the closing date will be classified as late.

Note: The complete program announcement, including all necessary forms, can be downloaded and printed from the Children's Bureau web site at *www.acf.dhhs.gov/programs/cb.* Hard copies of the complete program announcement may be requested by calling the National Adoption Information Clearinghouse at 1–888–251–0075. The complete program announcement is necessary for any potential applicant.

FOR FURTHER INFORMATION CONTACT: Sally Flanzer, Children's Bureau, 202–205–8914.

SUPPLEMENTARY INFORMATION:

Priority Areas

2001A. Adoption Opportunities

2002A.1 Developing Models for Increasing Adoptive Placement of Minority Children

Eligible Applicants: States, local government entities, federally recognized Indian Tribes and tribal organizations, college and universities, public or private non-profit licensed child welfare or adoption agencies, licensed child care or respite care providers, and incorporated adoptive parent groups with experience working with adoptive populations may apply. Faith-based organizations are eligible to apply for these grants. Groups of faith-based and smaller community-based organizations should consider collaborating with existing coalitions or to form new coalitions to work together in conducting projects; however, each coalition must identify a primary applicant responsible for administering the grant. Faith-based, community-based and primary applicants in consortia must be otherwise eligible to apply for these grants. Colleges, universities and for-profit agencies may be included in an application, as a subcontractor or affiliate, but must waive their profit in order to receive Federal funds even under subgrant or subcontract arrangements, with eligible non-profit agencies and organizations.

Project Duration: This announcement is inviting applications for project periods up to three years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the three year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

Federal Share of Project Cost: Grant amounts will vary and may range from $50,000 to $300,000 per budget period for each of three years. The dollar amount requested must be fully justified and documented.

Matching Requirements: Grantees must provide at least 10 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 $900,000 of Federal funds (based on an award of $300,000 per budget period) must provide a match of at least $99,999 (10 percent of the total project cost). Grantees will be held accountable for commitments of non-Federal resources even if over the amount of the required match. Failure to provide the amount will result in disallowance of Federal match.

Anticipated Number of Projects to be Funded: It is anticipated that four projects will be funded.

2002.A2 Developing Models for Post-Legal Adoption Services

Eligible Applicants: States, local government entities, federally recognized Indian Tribes and tribal organizations, college and universities, public or private non-profit licensed child welfare or adoption agencies, licensed child care or respite care providers, and incorporated adoptive parent groups with experience working with adoptive populations may apply. Faith-based organizations are eligible to apply for these grants. Groups of faith-based and smaller community-based organizations should consider collaborating with existing coalitions or to form new coalitions to work together in conducting projects; however, each coalition must identify a primary applicant responsible for administering the grant. Faith-based, community-based and primary applicants in consortia must be otherwise eligible to apply for these grants. Colleges, universities and for-profit agencies may be included in an application as subcontractors or affiliates, but must waive their profit in order to receive Federal funds even under subgrant or subcontract arrangements, with eligible non-profit agencies and organizations.

Project Duration: This announcement is inviting applications for project periods up to three years. Awards, on a competitive basis, will be for a one-year

budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the three year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

Federal Share of Project Cost: Grant amounts will vary and may range from $50,000 to $300,000 per budget period for each of the three years. The dollar amount requested must be justified as appropriate to the activities proposed.

Matching Requirements: Grantees must provide at least 10 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 $900,000 of Federal funds (based on an award of $300,000 per budget period) must provide a match of at least $99,999 (10 percent of the total project cost). Grantees will be held accountable for commitments of non-Federal resources even if over the amount of the required match. Failure to provide the amount will result in disallowance of Federal match.

Anticipated Number of Projects to be Funded: It is anticipated that four projects will be funded.

2002A.3 Developing Models of Respite Care as a Service for Families Who Adopt Children With Special Needs

Eligible Applicants: States, local government entities, federally recognized Indian Tribes and tribal organizations, college and universities, public or private non-profit licensed child welfare or adoption agencies, licensed child care or respite care providers, and incorporated adoptive parent groups with experience working with adoptive populations may apply. Faith-based organizations are eligible to apply for these grants. Groups of faith-based and smaller community-based organizations should consider collaborating with existing coalitions or to form new coalitions to work together in conducting projects; however, each coalition must identify a primary applicant responsible for administering the grant. Faith-based, community-based and primary applicants in consortia must be otherwise eligible to apply for these grants. Colleges, universities and for-profit agencies may be included in an application as subcontractors or affiliates, but must waive their profit in order to receive Federal finds even under subgrant or subcontract arrangements, with eligible non-profit agencies and organizations.

Project Duration: This announcement is inviting applications for project periods up to three years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the three year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

Federal Share of Project Costs: Grant amounts will vary and may range from $50,000 to $300,000 per budget-year for each of the three years.

Matching or Cost Sharing Requirement: Grantee must provide at least 10 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 $900,000 of Federal funds (based on an award of $300,000 per budget period) must provide a match of at least $99,999 (10 percent of the total project cost). Grantees will be held accountable for commitments of non-Federal resources even if over the amount of the required match. Failure to provide the amount will result in disallowance of Federal match.

Anticipated Number of Projects to be Funded: It is anticipated that four projects will be funded.

2002A.4 National Adoption Internet Photolisting Service-AdoptUSKids, the National Adoption Information Exchange System, and Special Needs Adoption Recruitment and Adoptive Family Support Project

Eligible Applicants: Any national, State, or local government entity, public or private non-profit agency, organization or university with demonstrated experience in adoption and the ability to maintain a National Adoption Internet Photolisting Service-*AdoptUSKids*, the National Adoption Information Exchange System, and mount a special needs adoption recruitment and adoptive family support activity. Faith-based organizations are eligible to apply for this grant but also must be otherwise eligible. The Children's Bureau will accept applications that represent partnerships with private non-profit agencies, organizations, universities, and foundations with experience in adoption and child welfare issues and subcontracts with firms specializing in these tasks. Applications representing multiple entities must identify a primary applicant responsible for administering the grant.

Project Duration: This announcement is inviting applications for project periods up to five years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for five years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the five year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

Federal Share of Project Costs: The maximum Federal share of the project is $4,439,000 per budget year.

Matching or Cost Sharing Requirement: This project is being funded under both the Adoptions Opportunity program, which as no match requirement, and the Children's Health Act, which has a 25 percent match requirement. Therefore, grantees must provide at least 25 percent of only $2,839,000 of the total approved cost of the project. 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 any amount more than $14,195,000 of Federal funds (based on an award of more than $2,839,000 per budget period) must provide a match of at least $4,731,667 (25 percent of $14,195,000 of the total project cost). Grantees will be held accountable for commitments of non-Federal resources even if over the amount of the required match. Failure to provide the amount will result in disallowance of Federal match.

Anticipated Number of Projects to be Funded: It is anticipated that one project will be funded.

2002A.5 Addressing Barriers to Cross-Jurisdictional Placement

Eligible Applicants: State child welfare agencies, State courts, licensed child welfare or adoption agencies, advocacy groups, associations that

support cross-jurisdictional adoption activities, public or private faith and community-based non-profit licensed child welfare or adoption agencies, and coalitions or collaborations of those groups are eligible to apply but must identify a principal applicant. Faith-based organizations are eligible to apply for these grants. Faith-based, community-based and primary applicants in collaborations or coalitions must be otherwise eligible to apply for these grants.

Project Duration: This announcement is inviting applications for project periods up to five years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for five years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the five year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

Federal Share of Project Cost: The maximum Federal share of the project is $300,000 per budget year.

Matching Requirements: Grantees must provide at least 10 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 $1,500,000 of Federal funds (based on an award of $300,000 per budget period) must provide a match of at least $166,667 (10 percent of the total project cost). Grantees will be held accountable for commitments of non-Federal resources even if over the amount of the required match. Failure to provide the amount will result in disallowance of Federal match.

Anticipated Number of Projects to be Funded: It is anticipated that one project will be funded.

2002B.1 National Resource Center for Programs Serving Abandoned Infants and Infants at Risk of Abandonment and Their Families

Eligible Applicants: Public or private non-profit agencies, organizations, and institutions of higher learning may apply. Faith-based organizations are eligible to apply for these grants.

Project Duration: This announcement is inviting applications for project periods up to four years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for four years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the four year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

Federal Share of Project Costs: The Federal share of the project is $700,000 per 12-month budget period.

Matching Requirement: Grantees must provide at least 10 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 $2,800,000 of Federal funds (based on an award of $700,000 per budget period) must provide a match of at least $311,111 (10 percent of the total project cost). Grantees will be held accountable for commitments of non-Federal resources even if over the amount of the required match. Failure to provide the amount will result in disallowance of Federal match.

Anticipated Number of Projects to be Funded: It is anticipated that one project will be funded.

2002C.1 National Resource Center for Community-Based Family Resource and Support Programs

Eligible Applicants: Public or private non-profit agencies, including faith-based agencies, organizations, and institutions of higher education may apply. Collaborative efforts and interdisciplinary approaches are encouraged. Faith-based organizations are eligible to apply. Applications from collaborations must identify a primary applicant responsible for administering the grants.

Project Duration: This announcement is inviting applications for a project period up to two years. The award, on a competitive basis, will be for a one-year budget period, although the project period may be for two years. Applications for continuation grants funded under these awards beyond the one-year budget period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

Federal Share of Project Costs: The maximum Federal share of the project is $1,075,000 per budget year.

Matching or Cost Sharing Requirement: Grantees must provide at least 10 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 $2,150,000 of Federal funds (based on an award of $1,075,000 per budget period) must provide a match of at least $238,889 (10 percent of the total project cost). Grantees will be held accountable for commitments of non-Federal resources even if over the amount of the required match. Failure to provide the amount will result in disallowance of Federal match.

Anticipated Number of Projects to be Funded: It is anticipated that one project will be funded.

2002C.2 Grants to Tribes, Tribal Organizations, and Migrant Programs for Community-Based Family Resource and Support Programs

It is anticipated that three grants (one each to a tribe, a tribal organization, and a migrant program) will be funded under this announcement for $109,450 per grantee for FY 2002. This amount reflects the maximum Federal share of this project not exceeding one-third (1/3) of one percent (1%) of the Federal appropriation for Title II for each 12-month budget period.

Eligible Applicants: Indian tribes, tribal organizations, and migrant programs with the capacity to establish and maintain family resource services for the prevention of child abuse and neglect and linkages with the State Network of Community-Based Family Resource and Support Programs may apply. Collaborative efforts and interdisciplinary approaches are encouraged. Applicants must specify if they are applying as a ''Tribe'' or ''Tribal Organization'' or ''Migrant Program.''

Project Duration: This announcement is inviting applications for project periods up to three years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the three-year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory

progress of the grantee and a determination that continued funding would be in the best interest of the Government.

Federal Share of Project Costs: The maximum Federal share of the project is projected to be $109,450 per budget year.

Matching or Cost Sharing Requirement: There is no match required.

Anticipated Number of Projects To Be Funded: It is anticipated that three projects will be funded, one in each area.

Evaluation Criteria

Reviewers will consider the following factors when scoring applications. Applicants, in order to adequately prepare their applications, must refer to the full program announcement for the specific evaluation criteria for each priority area. The points awarded for each criterion vary, depending on the specific area.

Criterion 1: Objectives and Need for Assistance. Applications will be judged on the extent to which they clearly specify the purposes and/or strategies of the proposed project and their relationship to legislative authority and child welfare outcomes, as appropriate; the quality of their statement regarding the need for the project; and evidence that the applicant understands current issues and recent developments in the field that may have relevance to the implementation of the project. Applicants must refer to the specific evaluation criteria for each priority area contained in the full Program Announcement in order to adequately prepare their applicants. The points awarded for this criterion vary, depending on the specific priority area.

Criterion 2: Approach. Applicants will be judged on the clarity, feasibility, and thoroughness of their description of the approach that they intend to use in implementing proposed projects. The approach sections will be expected to include, as appropriate, information on barriers to implementation and proposed solutions to those barriers; necessary collaborations with other organizations and agencies and their respective roles; evaluation plans; reporting requirements; and staffing plans. Applicants must refer to the specific evaluation criteria for each priority area contained in the full Program Announcement in order to adequately prepare their applications. The points awarded for this criterion vary, depending on the specific priority area.

Criterion 3: Organizational Profiles. Applicants will be judged on the experience and demonstrated competence of staff who are proposed to implement the project and, as appropriate, the experience of the organization in implementing related projects. Applicants must refer to the specific evaluation criteria for each priority area contained in the full Program Announcement in order to adequately prepare their applications. The points awarded for this criteria vary, depending on the specific priority area.

Criterion 4: Budget and Budget Justification. Applicants will be judged on the adequacy, reasonableness, and completeness of their budget requests to support their proposed projects, including their management plans to control and account for expenditure of project funds. Applicants must refer to the specific evaluation criteria for each priority area contained in the full Program Announcement in order to adequately prepare their applicants. The points awarded for their criterion vary, depending on the specific priority area.

Required Notification of the Single Point of Contact

Most portions of this program are covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Program and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, and Wyoming have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Applicants to the Adoption Opportunities program are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the accommodate or explain rule. A list of the Single Points of Contact for each State and Territory can be found on line at *http://www.whitehouse.gov/omb/grants/spoc.html.*

Dated: April 4, 2002.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 02–8754 Filed 4–10–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02F–0142]

Cyanotech Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Cyanotech Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of *Haematococcus* algae astaxanthin as a nutrient supplement.

FOR FURTHER INFORMATION CONTACT: James C. Wallwork, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 5100 Paint Branch Pkwy, College Park, MD 20740, 202–418–3078.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 2A4732) has been filed by Cyanotech Corp., c/o T. Todd Lorenz, 11034 West Ocean Air Dr., # 252, San Diego, CA 92130. The petition proposes to amend the food additive regulations in part 172 *Food Additives Permitted for Direct Addition to Food for Human*

Consumption (21 CFR part 172) to provide for the safe use of *Haematococcus* algae astaxanthin as a nutrient supplement.

The agency has determined under 21 CFR 25.32(r) 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.

Dated: March 29, 2002.

Leslye M. Fraser,

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

[FR Doc. 02–8746 Filed 4–10–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food Safety Research: Availability of Cooperative Agreements; Request for Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), in its request for applications (RFA), is announcing the availability of approximately $500,000 in research funds for fiscal year (FY) 2002. These funds will be used to support collaborative research efforts between the Center for Food Safety and Applied Nutrition (CFSAN) and scientists and to complement and accelerate ongoing research in the area of transmissible spongiform encephalopathies (TSE) in order to avoid their presence in the nation's food supply, food additives, and dietary supplements.

DATES: Submit applications by June 10, 2002.

ADDRESSES: Submit completed applications to: Maura Stephanos, Grants Management Specialist, Grants Management Staff (HFA–520), Division of Contracts and Procurement Management, Food and Drug Administration, 5630 Fishers Lane, rm. 2129, Rockville, MD 20857, 301–827–7183, FAX 301–827–7101, e-mail: mstepha1@oc.fda.gov.

Application forms are available either from Maura Stephanos (see previous paragraph) or on the Internet at http://www.grants.nih.gov/grants/funding/phs398/phs398.html.

FOR FURTHER INFORMATION CONTACT:

Regarding the administrative and financial management aspects of this notice: Maura Stephanos (see **ADDRESSES**).

Regarding the programmatic aspects of this notice: John W. Newland, Microbial Research Coordinator, Office of Science (HFS–06), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1915, e-mail: john.newland@cfsan.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is committed to reducing the incidence of foodborne illness to the greatest extent feasible and to protecting the integrity of the nation's food supply. Research in food safety seeks to prevent foodborne illness by improving our ability to detect and quantitate foodborne pathogens, toxins and chemicals that could jeopardize the safety of the food supply, and to find new and improved ways to control these agents. CFSAN supports multiyear cooperative agreements intended to help achieve these research goals of reducing the incidence of foodborne illness and ensuring the integrity of foods, food additives, and dietary supplements. This extramural program supports novel collaborative research efforts between CFSAN and scientists, and leverages expertise not found within CFSAN to complement and accelerate ongoing research. Collaborations such as these provide information critical to food safety guidance and policymaking, and stimulate fruitful interactions between FDA scientists and those within the greater research community.

In continuation of this effort, FDA is announcing the availability of research funds for FY 2002 to support research in the following category: The development of proteinase-resistant proteins that can be used as surrogates of infectious prions associated with the family of diseases known as TSE. Approximately $500,000 will be available in FY 2002. FDA anticipates making awards of $100,000 to $250,000 (direct plus indirect costs) per award per year. Support of these agreements may be up to 4 years in duration with the total budget amount not to exceed $250,000 (direct plus indirect costs) per year or a total of $1 million for a 4-year award. Any application received that exceeds the amounts stated previously will not be considered responsive and will be returned to the applicant without being reviewed. The number of agreements funded will depend on the availability of Federal funds to support the projects and on the quality of the applications received. After the first year, additional years of noncompetitive support are predicated upon performance and the availability of Federal funds.

FDA will support the research studies covered by this notice under section 301 of the Public Health Service Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 93.103.

FDA is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2010,'' a national effort to reduce morbidity and mortality and to improve quality of life. Applicants may obtain a hard copy of the ''Healthy People 2010'' objectives, vols. I and II, conference edition (B0074) for $22 per set, by writing to the Office of Disease Prevention and Health Promotion Communication Support Center (Center), P.O. Box 37366, Washington, DC 20013–7366. Each of the 28 chapters of ''Healthy People 2010'' is $2 per copy. Telephone orders can be placed at the Center on 301–468–5690. The Center also sells the complete conference edition in CD–ROM format (B0071) for $5. This publication also is available on the Internet at http://health.gov/healthypeople under ''Publications.''

The Public Health Service (PHS) strongly encourages all award recipients to provide a smoke-free workplace and to discourage the use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

II. Research Goals and Objectives

Proposed projects designed to fulfill the specific objectives of the following requested project will be considered for funding. Applicants may submit more than one application. It should be emphasized that in the following project there is a particular desire to promote the development of surrogate agents and techniques to facilitate studies that will reliably predict the ability of treatments or manufacturing processes to inactivate the infectivity and biological activity of prions associated with the family of diseases known as TSE. None of the proposed projects should involve human research subjects that are not exempt from the Department of Health and Human Services (DHHS) regulations (45 CFR part 46) for the protection of human research subjects. The project and its objectives are as follows:

There are two objectives to this project. The first objective of this project is to develop proteinase resistant proteins that can serve as surrogates for

infectious prions associated with the family of TSE diseases. These proteinase resistant surrogate proteins must be suitable for reliably measuring the efficacy of treatments or manufacturing processes intended to inactivate the infectivity and biological activity of TSE-related prions. The second objective of this project is to devise a system that will demonstrate that the surrogates will accurately predict the efficacy of prion-targeted inactivation methods in the context of FDA-regulated foods, food additives, dietary supplements or cosmetics, or the equipment used to manufacture or process them. For example, the surrogates should be evaluated in a regulated product wherein processing helps assure the elimination of infectious prion particles, such as a gelatin-based model test system with potential applicability to a wide range of these FDA-regulated products. Theoretically, such a system could rely upon the ability to unfold beta sheets that are structurally more stable than prion protein to correlate surrogate performance with prion inactivation. Alternatively, a system may rely upon a direct demonstration of the correlation between surrogate performance and prion inactivation through the use of bioassays. Emphasis will be placed on creative solutions capable of both developing the desired surrogates and providing evidence of their performance.

III. Mechanism of Support

A. Award Instrument

Support for this program will be in the form of cooperative agreements. These cooperative agreements will be subject to all policies and requirements that govern the research grant programs of the PHS, including the provisions of 42 CFR part 52 and 45 CFR parts 74 and 92. The regulations issued under Executive Order 12372 do not apply to this program. The NIH modular grant program does not apply to this FDA program.

B. Eligibility

These cooperative agreements are available to any foreign or domestic, public or private non-profit entity (including State and local units of government) and any foreign or domestic, for-profit entity. For-profit entities must commit to excluding fees or profit in their request for support to receive awards. Organizations described in section 501(c)(4) of the Internal Revenue Code of 1968 that engage in lobbying are not eligible to receive awards.

C. Length of Support

The length of support will be for up to 4 years. Funding beyond the first year will be noncompetitive and will depend on:

1. Satisfactory performance during the preceding year, and

2. Availability of Federal FY funds.

IV. Reporting Requirements

Annual Financial Status Reports (FSR) (SF–269) are required. An original FSR and two copies shall be submitted to FDA's Grants Management Officer (see **ADDRESSES** section) within 90 days of the budget expiration date of the cooperative agreement. Failure to file the FSR on time may be grounds for suspension or termination of the agreement. Program Progress Reports will be required quarterly and will be due 30 days following each quarter of the applicable budget period except that the fourth quarterly report which will serve as the annual report will be due 90 days after the budget expiration date. For continuing agreements, an annual Program Progress Report is also required. Submission of the noncompeting continuation application (PHS 2590) will be considered as the annual Program Progress Report. The recipient will be advised of the suggested format for the Program Progress Report at the time an award is made. In addition, the principal investigator will be required to present the progress of the study at an annual FDA extramural research review workshop in Washington, DC. Travel costs for this requirement should be specifically requested by the applicant as part of their application. A final FSR, Program Progress Report, and Invention Statement, must be submitted within 90 days after the expiration of the project period, as noted on the Notice of Grant Award.

Program monitoring of recipients will be conducted on an ongoing basis and written reports will be reviewed and evaluated at least quarterly by the Project Officer and the Project Advisory Group. Project monitoring may also be in the form of telephone conversations between the Project Officer/Grants Management Specialist and the Principal Investigator and/or a site visit with appropriate officials of the recipient organization. A record of these monitoring activities will be duly made in an official file specific for each cooperative agreement and may be available to the recipient of the cooperative agreement upon request.

V. Delineation of Substantive Involvement

Inherent in the cooperative agreement award is substantive involvement by the awarding agency. Accordingly, FDA will have a substantive involvement in the programmatic activities of all the projects funded under this RFA. Substantive involvement may include, but is not limited to the following:

1. FDA will provide guidance and direction with regard to the scientific approach and methodology that may be used by the investigator.

2. FDA will participate with the recipient in determining and executing any: (a) Methodological approaches to be used, (b) procedures and techniques to be performed, (c) sampling plans proposed, (d) interpretation of results, and (e) microorganisms and commodities to be used.

3. FDA will collaborate with the recipient and have final approval on the experimental protocols. This collaboration may include protocol design, data analysis, interpretation of findings, coauthorship of publications, and the development and filing of patents.

VI. Review Procedure and Criteria

A. Review Method

All applications submitted in response to this RFA will first be reviewed by grants management and program staff for responsiveness. To be responsive, an application must: (1) Be received by the specified due date; (2) be submitted in accordance with sections III.B, VII, and VIII.A of this document; (3) not exceed the recommended funding amount stated in section I of this document; (4) address the specific requirements of the project stated in section II of this document; and (5) bear the original signatures of both the principal investigator and the institution's/organization's authorized official. If applications are found to be not responsive to this announcement, they will be returned to the applicant without further consideration.

Responsive applications will be reviewed and evaluated for scientific and technical merit by an ad hoc panel of experts in the subject field of the specific application.

Responsive applications will also be subject to a second level of review by a National Advisory Council for concurrence with the recommendations made by the first level reviewers. Final funding decisions will be made by the Commissioner of Food and Drugs or his designee.

B. Review Criteria

Applications will be evaluated by program and grants management staff for responsiveness. Applications will be reviewed and ranked. Funding will start with the highest ranked application and additional awards will be made based on an application's standing within the review rankings. All questions of a technical or scientific nature should be directed to the CFSAN program staff, and all questions of an administrative or financial nature should be directed to the grants management staff. (See the **FOR FURTHER INFORMATION CONTACT** section of this document for addresses.)

All applications will be reviewed and scored on the following criteria:

1. Soundness of the scientific rationale for the proposed study and appropriateness of the study design and its ability to address all of the objectives of the RFA;
2. Availability and adequacy of laboratory facilities, equipment, and support services, e.g., bio-statistics computational support, databases, etc.;
3. Research experience, training, and competence of the principal investigator and support staff; and
4. Whether the proposed study is within the budget guidelines and proposed costs have been adequately justified and fully documented.

VII. Submission Requirements

The original and two copies of the completed Grant Application Form PHS 398 (Rev. 4/98 or Rev. 5/01) or the original and two copies of PHS 5161–1 (Rev. 7/00) for State and local governments, with copies of the appendices for each of the copies, should be delivered to Maura Stephanos (see **ADDRESSES**). State and local governments may choose to use the PHS 398 application form in lieu of PHS 5161–1. The application receipt date is June 10, 2002. No supplemental or addendum material will be accepted after the receipt date. The outside of the mailing package and item 2 of the application face page should be labeled: ''Response to RFA FDA CFSAN–02–3.''

VIII. Method of Application

A. Submission Instructions

Applications will be accepted during normal business hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established receipt date. Applications will be considered received on time if sent or mailed on or before the receipt date as evidenced by a legible U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier, unless they arrive too late for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant. (Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.) NOTE: Do not send applications to the Center for Scientific Research, National Institutes of Health (NIH). Any application that is sent to NIH, and is then forwarded to FDA and not received in time for orderly processing will be deemed not responsive and returned to the applicant. Applications must be submitted via mail or hand delivery as stated previously. FDA is unable to receive applications electronically. Applicants are advised that FDA does not adhere to the page limitations or the type size and line spacing requirements imposed by NIH on its applications.

B. Format for Application

Submission of the application must be on Grant Application Form PHS 398 (Rev. 4/98 or Rev. 5/01) or PHS 5161–1 (Rev. 7/00). All ''General Instructions'' and ''Specific Instructions'' in the application kit should be followed with the exception of the receipt dates and the mailing label address.

The face page of the application should reflect the request for applications number, RFA–FDA–CFSAN–02–3. Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

Information collection requirements requested on Form PHS 398 and the instructions have been submitted by PHS to the Office of Management and Budget (OMB) and were approved and assigned OMB control number 0925–0001. The requirements requested on Form PHS 5161–1 were approved and assigned OMB control number 0348–0043.

C. Legend

Unless disclosure is required by the Freedom of Information Act as amended (5 U.S.C. 552) as determined by the freedom of information officials of DHHS or by a court, data contained in the portions of this application that have been specifically identified by page number, paragraph,etc., by the applicant as containing restricted information shall not be used or disclosed except for evaluation purposes.

Dated: April 5, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–8777 Filed 4–10–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 99D–4575 and 99D–4576]

Guidance for Industry: Food Contact Substance Notification System; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of two final guidance documents entitled: ''Preparation of Food Contact Notifications and Food Additive Petitions for Food Contact Substances: Chemistry Recommendations'' and ''Preparation of Food Contact Notifications for Food Contact Substances: Toxicology Recommendations.'' These guidance documents are intended to provide guidance for industry regarding the preparation of food contact notifications (FCNs) and petitions for food contact substances (FCSs). FDA is providing these guidance documents as part of its implementation of the FCN process established by the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Submit written or electronic comments on these guidance documents at any time.

ADDRESSES: Submit written requests for single copies of the guidance documents to the Office of Food Additive Safety (HFS–275), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on these guidance documents to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. You also may request a copy of the guidance documents by electronic mail at OPAPMN@CFSAN.FDA.GOV, or by telephone to the Office of Food Additive Safety at 202–418–3087 (voice) or FAX

202–418–3131. All requests should identify the guidance documents by the titles listed in the **SUMMARY** section. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance documents.

FOR FURTHER INFORMATION CONTACT: Mitchell Cheeseman, Center for Food Safety and Applied Nutrition (HFS–205), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 202–418–3083.

SUPPLEMENTARY INFORMATION:

I. Background

The FDAMA amended section 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348) to establish the FCN process as the primary method for authorizing new uses of food additives that are FCSs. An FCS is defined in section 409(h)(6) of the act as ''any substance intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding food if such use is not intended to have any technical effect in such food.'' FDA expects most new uses of FCSs that previously would have been regulated by issuance of a listing regulation in response to a food additive petition or would have been exempted from the requirement of a regulation under the threshold of regulation process will be the subject of FCNs. FDA is announcing the availability of two final guidance documents entitled: ''Preparation of Food Contact Notifications and Food Additive Petitions for Food Contact Substances: Chemistry Recommendation'' (Docket No. 99D–4575) and ''Preparation of Food Contact Notifications for Food Contact Substances: Toxicology Recommendations'' (Docket No. 99D–4576). These documents are intended to provide guidance for industry regarding the preparation of FCNs. FDA is providing these final guidance documents as part of its implementation of the FCN process established by FDAMA.

II. Significance of Guidance

These two final guidance documents represent the agency's current thinking on the data and information that should be submitted in an FCN. These guidance documents do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations. These two guidance documents are level 1 guidance under the agency's good guidance practices (GGPs) regulation (21 CFR 10.115).

Because they are level 1 guidance under the agency's GGPs, FDA announced the availability of these two guidance documents entitled: ''Preparation of Premarket Notifications for Food Contact Substances: Chemistry Recommendations'' and ''Preparation of Premarket Notifications for Food Contact Substances: Toxicology Recommendations'' in draft form for comment in a notice published in the **Federal Register** of November 12, 1999 (64 FR 61648). The comment period for these two draft guidance documents closed on February 14, 2000. FDA received two comments on the draft guidance documents which it has addressed in the final guidance documents being made available by this notice. Thus, in accordance with its GGPs, FDA is now reissuing these two guidance documents in final form. The final guidance documents have different titles than the draft guidance documents made available in the November 12, 1999, notice.

III. Comments

Interested persons may, at any time, submit written comments regarding the guidance documents to the Dockets Management Branch (see **ADDRESSES** section for address). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the appropriate docket numbers found in brackets in the heading of this document. The guidance documents and received comments may be examined in the office above between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

The guidance also may be accessed on the Internet site for the Center for Food Safety and Applied Nutrition (CFSAN) listing all CFSAN guidances at http://www.cfsan.fda.gov/~dms/guidance.html.

Dated: March 29, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–8745 Filed 4–10–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0081]

Draft ''Guidance for Industry: A Modified Lot-Release Specification for Hepatitis B Surface Antigen (HBsAg) Assays Used to Test Blood, Blood Components, and Source Plasma Donations;'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled ''Guidance for Industry: A Modified Lot-Release Specification for Hepatitis B Surface Antigen (HbsAg) Assays Used to Test Blood, Blood Components, and Source Plasma Donations,'' dated April 2002. The draft guidance document when finalized is intended to provide recommendations to manufacturers of assays for the detection of HBsAg that are intended to be used to test blood, blood components, and Source Plasma. Topics include recommendations on minimum sensitivity specifications for HbsAg assays used to test blood, blood components, and Source Plasma donations.

DATES: Submit written or electronic comments on the draft guidance to ensure their adequate consideration in preparation of the final document by July 10, 2002. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Joseph L. Okrasinski, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Guidance for Industry: A Modified Lot-Release Specification for Hepatitis B Surface Antigen (HBsAg) Assays Used to Test Blood, Blood Components, and Source Plasma Donations,'' dated April 2002. Under 21 CFR 610.44, manufacturers of HBsAg assays used to test donations must verify acceptable sensitivity and specificity of such kits by testing the kit-lots using an FDA reference panel. This draft guidance document is intended to provide recommendations to manufacturers of assays for the detection of HBsAg that are intended to be used to test blood, blood components, and Source Plasma donations. The current limit of detection specification for HBsAg assays used to test blood donations corresponds to 1.0 nanogram (ng) HBsAg/milliliter (mL), and was established in 1996. The draft guidance contains the recommendation that all HBsAg detection assays that are used to test blood, blood components, and Source Plasma donations have a lower limit of detection specification of 0.50 ng HBsAg/mL or less.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This draft guidance document represents the agency's current thinking on the minimum sensitivity for the HBsAg assays used to test blood and Source Plasma donations. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Comments

This draft document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments regarding this draft guidance document. Submit written or electronic comments to ensure adequate consideration in preparation of the final document by July 10, 2002. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cber/guidelines.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: March 29, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–8747 Filed 4–10–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group, Biomedical Research and Research Training Review Subcommittee B.

Date: June 13, 2002.

Time: 8 AM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Select—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Arthur L. Zachary, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13H, Bethesda, MD 20892, (301) 594–2886, *zacharya@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: April 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8724 Filed 4–10–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group Biomedical Research and Research Training Review Subcommittee A

Date: June 12, 2002

Time: 8 AM to 6 PM

Agenda: To review and evaluate grant applications

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814

Contact Person: Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13, Bethesda, MD 20892, (301) 594–2848, *latkerc@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: April 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8725 Filed 4–10–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIA.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Aging, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIA.

Date: May 20–21, 2002.

Closed: May 20, 2002, 7 PM to adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence, of individual investigators.

Place: Gerontology Research Center, 4940 Eastern Avenue, Baltimore, MD 21224.

Closed: May 21, 2002, 8 AM to 8:15 AM.

Agenda: To review and evaluate personal qualifications and performance, and competence, of individual investigators.

Place: Gerontology Research Center, 4940 Eastern Avenue, Baltimore, MD 21224.

Open: May 21, 2002, 8:15 AM to 12:30 PM.

Agenda: Committee Discussion.

Place: Gerontology Research Center, 4940 Eastern Avenue, Baltimore, MD 21224.

Closed: May 21, 2002, 12:30 PM to 1:30 PM.

Agenda: To review and evaluate personal qualifications and performance, and competence, of individual investigators.

Place: Gerontology Research Center, 4940 Eastern Avenue, Baltimore, MD 21224.

Open: May 21, 2002, 1:30 PM to 5 PM.

Agenda: Committee Discussion.

Place: Gerontology Research Center, 4940 Eastern Avenue, Baltimore, MD 21224.

Closed: May 21, 2002, 5 PM to 6 PM.

Agenda: To review and evaluate personal qualifications and performance, and competence, of individual investigators.

Place: Gerontology Research Center, 4940 Eastern Avenue, Baltimore, MD 21224.

Contact Person: Dan L. Longo, MD, Scientific Director, National Institute of Aging, Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825, 410–558–8110, *dl14q@nia.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 3, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8726 Filed 4–10–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel Center for Services and interventions Research.

Date: April 10, 2002.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216, *hhaigler@mail.nih.gov.*

The notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: April 4, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8727 Filed 4–10–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: April 29, 2002.

Time: 1 PM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: 6700–B Rockledge, Room 2223, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anna Ramsey-Ewing, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301 496–2550, *ar15o@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 4, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8729 Filed 4–10–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(b)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, RFA–AA–92–991 ALCOHOL-RELATED PROBLEMS AMONG COLLEGE STUDENTS: EPIDEMIOLOGY AND PREVENTION.

Date: May 1–2, 2002.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD 20814.

Contact Person: Dorita Sewell, PHD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, National Institute of Health, 6000 Executive Boulevard, Suite 409, MD 20892, 301–443–2890, *dsewell@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: April 4, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8730 Filed 4–10–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, CONTRACT PROPOSAL REVIEW—Loan Replacement Program.

Date: April 29, 2002.

Time: 8 AM to 11 AM.

Agenda: To review and evaluate contract proposals.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, *etaylor@niaaa.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: April 4, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8731 Filed 4–10–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: April 15–16, 2002.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Marriott Marina-San Diego, 333 West Harbor Drive, San Diego, CA 92101–7700.

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 4, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8732 Filed 4–10–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communications Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign

language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Deafness and Other Communication Disorders Advisory Council.

Date: May 22, 2002.

Open: 8:30 a.m. to 11:30 a.m.

Agenda: Staff reports on divisional, programmatic, and special activities.

Place: 31 Center Drive, Bldg. 31, Conf. Rm. 10, Bethesda, MD 20892.

Closed: 11:30 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: 31 Center Drive, Bldg. 31, Conf. Rm. 10, Bethesda, MD 20892.

Contact Person: Craig A. Jordan, PhD, Chief, Scientific Review Branch, NIH/NIDCD/DER, Executive Plaza South, Room 400C, Bethesda, MD 20892–7180, 301–496–8683.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *www.nidcd.nih.gov/about/councils/ndcdac/ndcdac.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: April 4, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8733 Filed 4–10–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis, Panel.

Date: May 24, 2002.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Tracy A. Shahan, PHD, Scientific Review Administrator, NIH/NIAMS, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: April 4, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8735 Filed 4–10–02; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Neurological Disorders and Stroke, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

Date: May 5–7, 2002.

Closed: May 5, 2002, 7 PM to 10 PM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Open: May 6, 2002, 8:15 AM to 9:10 AM.

Agenda: To discuss program planning and program accomplishments.

Place: Neuroscience Center, Conference Room A1/A2, 6001 Executive Boulevard, Rockville, MD 20852.

Closed: May 6, 2002, 9:10 AM to 9:30 AM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Neuroscience Center, Conference Room A1/A2, 6001 Executive Boulevard, Rockville, MD 20852.

Open: May 6, 2002, 9:30 AM to 10:10 AM.

Agenda: To discuss program planning and program accomplishments.

Place: Neuroscience Center, Conference Room A1/A2, 6001 Executive Boulevard, Rockville, MD 20852.

Closed: May 6, 2002, 10:10 AM to 10:45 AM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Neuroscience Center, Conference Room A1/A2, 6001 Executive Boulevard, Rockville, MD 20852.

Open: May 6, 2002, 10:45 AM to 11:25 AM.

Agenda: To discuss program planning and program accomplishments.

Place: Neuroscience Center, Conference Room A1/A2, 6001 Executive Boulevard, Rockville, MD 20852.

Closed: May 6, 2002, 11:25 AM to 1:00 PM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Neuroscience Center, Conference Room A1/A2, 6001 Executive Boulevard, Rockville, MD 20852.

Open: May 6, 2002, 1 PM to 2:25 PM.

Agenda: To discuss program planning and program accomplishments.

Place: Neuroscience Center, Conference Room A1/A2, 6001 Executive Boulevard, Rockville, MD 20852.

Closed: May 6, 2002, 2:25 PM to 3 PM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Neuroscience Center, Conference Room A1/A2, 6001 Executive Boulevard, Rockville, MD 20852.

Open: May 6, 2002, 3 PM to 3:40 PM.

Agenda: To discuss program planning and program accomplishments.

Place: Neuroscience Center, Conference Room A1/A2, 6001 Executive Boulevard, Rockville, MD 20852.

Closed: May 6, 2002, 3:40 PM to 4 PM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Neuroscience Center, Conference Room A1/A2, 6001 Executive Boulevard, Rockville, MD 20852.

Closed: May 6, 2002, 5 PM to 9 PM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Closed: May 7, 2002, 8:30 AM to Adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Story C. Landis, PhD, Director, Division of Intramural Research, NINDS, National Institutes of Health, Building 36, Room 5A05, Bethesda, MD 20892, 301–435–2232.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 4, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8737 Filed 4–10–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Functional Proteomics: Applications to Environmental Health Research.

Date: May 21–23, 2002.

Time: 7 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Hawthorn Suites Hotel, 300 Meredith Drive, Durham, NC 27713.

Contact Person: Linda K Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–1307.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Collaborative Centers for Parkinson's Disease Environmental Research (FRA ES 02–003).

Date: June 23–25, 2002.

Time: 7 PM to 5 PM.

Agenda: Radisson Governors Inn, I–40 & Davis Dr., Exit 280, Research Triangle Park, NC 27709.

Contact Person: Linda K Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: April 4, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8738 Filed 4–10–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–2(4).

Date: April 10, 2002.

Time: 11 AM to 12:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Prabha L. Atreya, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, (301) 435–8367.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 17, 2002.

Time: 11:30 AM to 12:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Charles N. Rafferty, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, Bethesda, MD 20892, (301) 435–3562.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 18, 2002.

Time: 1 PM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Angela M. Pattatucci-Aragon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 26, 2002.

Time: 9 AM to 10:30 AM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Charles N. Rafferty, PhD, NIOSH Scientific Review Administrator,

Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, Bethesda, MD 20892, (301) 435–3562.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 4, 2002.

Anna Snouffer,

Deputy, Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8728 Filed 4–10–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, April 7, 2002, 4 PM to April 9, 2002, 10 AM, Argonne Guest House, Argonne National Laboratory, 9700 South Cass Avenue—Bldg 460, Argonne, IL, 60439 which was published in the **Federal Register** on March 27, 2002, 67 FR 14724–14725.

The starting time of the meeting on April 7, 2002 has been changed to 7 PM. The meeting dates and location remain the same. The meeting is closed to the public.

Dated: April 4, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8734 Filed 4–10–02; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 15, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 18, 2002.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael Micklin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 23, 2002.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892, (301) 435–3565.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 83.893, National Institutes of Health, HHS)

Dated: April 4, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8736 Filed 4–10–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4572–D–21]

Office of the Chief Financial Officer; Order of Succession

AGENCY: Office of the Chief Financial Officer, HUD.

ACTION: Notice of order of succession.

SUMMARY: In this notice, the Chief Financial Officer of the Department of Housing and Urban Development designates the Order of Succession for the Office of Chief Financial Officer.

EFFECTIVE DATE: April 3, 2002.

FOR FURTHER INFORMATION CONTACT: Roger L. Williams, Administrative Officer, Office of the Chief Financial Officer, Department of Housing and Urban Development, Room 2104, 451 7th Street, SW., Washington, DC 20410, (202) 708–0313. (This is not a toll-free number.) This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339 (toll-free).

SUPPLEMENTARY INFORMATION: The Chief Financial Officer for the Department of Housing and Urban Development is issuing this Order of Succession of officials authorized to perform the functions and duties of the Office of the Chief Financial Officer when, by reason of absence, disability, or vacancy in office, the Chief Financial Officer is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Vacancy Reform Act of 1998, 5 U.S.C. 3345–3349d.

Accordingly, the Chief Financial Officer designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Vacancy Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Chief Financial Officer is not available to exercise the powers or perform the duties of the Chief Financial Officer, the following officials within the Office of the Chief Financial Officer are hereby designated to exercise the powers and perform the duties of the Office:

(1) Deputy Chief Financial Officer;

(2) Assistant Chief Financial Officer for Budget;

(3) Assistant Chief Financial Officer for Accounting:

(4) Assistant Chief Financial Officer for Financial Management.

These officials shall perform the functions and duties of the Office in the order specified herein, and no official

shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

This Order of Succession supersedes the Order of Succession for the Office of the Chief Financial Officer, published at 66 FR 23947 (May 3, 2001).

Authority: Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: April 3, 2002.

Angela M. Antonelli,

Chief Financial Officer, Department of Housing and Urban Development.

[FR Doc. 02–8778 Filed 4–10–02; 8:45 am]

BILLING CODE 4210–77–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Neotropical Migratory Bird Conserviaton Act: Request for Grants Proposals for Year 2002

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of request for proposals.

SUMMARY: The purpose of this notice is to advise the public that the Fish and Wildlife Service (Service) is accepting proposals for funding under the Neotropical Migratory Bird Conservation Act (Act) program. Projects may be for protection and management of neotropical migratory bird populations; maintenance, management, protection, and restoration of their habitats; research and monitoring; law enforcement; and community outreach and education. Projects may be located in the U.S., Latin America or the Caribbean, and require matching funds.

DATES: Proposals must be postmarked no later than May 13, 2002.

ADDRESSES: Address proposals to: Division of Bird Habitat Conservation, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 110, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Ryan or Office Secretary, Division of Bird Habitat Conservation, 703.358.1784; facsimile 703.358.2282.

SUPPLEMENTARY INFORMATION: The purposes of the Neotropical Migratory Bird Conservation Act (Act) are to:

1. Perpetuate healthy populations of neotropical migratory birds;

2. Assist in the conservation of these birds by supporting conservation initiatives in the United States, Latin America, and the Caribbean; and

3. Provide financial resources and foster international cooperation for those initiatives.

The Act authorizes $5 million for this program, and Congress appropriated $3 million for Fiscal Year 2002. At a minimum, 75% of this money will be available for projects outside the United States. No maximum request has been established. The match ratio is 3:1, calculated in U.S. dollars. That is, every grant dollar requested under the Act must be matched by 3 partner dollars. U.S.-Federal funds may be used to support projects, but may not be used as match. Partner funds for U.S. projects must be in cash, whereas funds for projects in Latin America and the Caribbean may be cash or in-kind contribution.

Projects may be located in the United States and in all countries of Latin America and the Caribbean, with the exception of Cuba. Projects in Canada are not eligible for this funding. An applicant may be an individual, corporation, partnership, trust, association, other private entity, government agency in the U.S. or a foreign country, or an international organization.

The Service has submitted information collection requirements to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995, Public Law 104–13. On December 21, 2001, OMB gave its approval for this information collection and confirmed the approval number as 1018–0113. 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 information collection solicited: is necessary to gain a benefit in the form of a grant, as determined by the Fish and Wildlife Service; is necessary to determine the eligibility and relative value of projects; results in an approximate paperwork burden of 40 hours per application; and does not carry a premise of confidentiality. The information collections in this program will not be part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: April 1, 2002.

Steve A. Williams,

Director, Fish and Wildlife Service.

[FR Doc. 02–8801 Filed 4–10–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Privacy Act of 1974, As Amended; Addition of a New System of Records

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed addition of a new system of records.

SUMMARY: The Department of the Interior (DOI) is issuing public notice of its intent to add a new Department-wide Privacy Act system of records to its inventory of records systems, subject to the Privacy Act of 1974. This action is necessary to meet the requirements of the Privacy Act to publish, in the **Federal Register**, notice of the existence and character of records systems maintained by the agency. The new system of records is called the ''National Conservation Training Center (NCTC) Training Server System, FWS–34''.

DATES: Comments on this new system of records must be received on or before May 21, 2002.

ADDRESSES: Address all comments on this new system of records to U.S. Fish and Wildlife Service, Privacy Act Officer, Mail Stop 222 Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Mr. Johnny R. Hunt, Service Privacy Act Officer, U.S. Fish and Wildlife Service, Phone: 703/358–1730.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service's (FWS) NCTC is a facility that provides training and education services to the FWS, other bureaus, and States. In order to efficiently arrange its operations, NCTC is implementing an electronic tracking system, which employs a Training Server and Online Training Information System (OTIS) support module. We require the information to validate training records necessary for certification and to meet periodic reporting requirements mandated by the Office of Personnel Management (OPM), the FWS's Office of Human Resources, and OMB, which reports on training budget and total student training days. 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget (OMB), in Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this proposed system notice may do so by submitting comments in writing as indicated under

ADDRESSES. Comments received within 40 days of publication will be considered. The system will be effective as proposed at the end of the comment period, unless comments are received that would require a contrary determination. We will publish a revised notice if we make changes based on our review of comments received.

Dated: April 8, 2002.

John D. Kraus,

Chief, Division of Policy and Directives Management, Fish and Wildlife Service.

INTERIOR/FWS–34

SYSTEM NAME:

National Conservation Training Center Training Server System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The records are stored at the U.S. Fish and Wildlife Service's National Conservation Training Center (NCTC), Division of Facility Operations, Office of the Registrar, RR1 Box 166, Shepherd Grade Road, Shepherdstown, WV 25443.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained on those individuals who participate in NCTC-sponsored training. This includes FWS employees as well as employees from other Federal agencies and non-Federal personnel from other States, private agencies, and universities. Training records are also kept on all FWS employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records contain the participant's name, Social Security number, organizational address, affiliation, phone/fax number, email address, lodging requirements, supervisor's name and telephone number, Federal job series/title/grade, billing information (e.g., responsible agency, tax I.D. number, agency location code (ALC) number, purchase order numbers, and credit card numbers), special needs, necessary course information (e.g., class titles/objectives/prerequisites, instructor(s), course leader and telephone number, start and end date/times, minimum/maximum enrollment) class status information (e.g., class canceled/finished/scheduled, field exercise notes), and student transcripts (e.g., what course(s) each individual completed/did not complete, canceled, no-show).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4118; Executive Order 11348, 32 FR 6335 (Providing for Further Training of Government Employees); as amended by Executive Order 12107, 44 FR 1055 (Relating to Civil Service Commission and Labor Management in Federal Service); 5 CFR part 410) (Establishing and Implementing Training Programs); Americans with Disabilities Act (Pub.L. 101–336).

PURPOSES:

To request and store data on individuals who participate in NCTC training and training of FWS employees to validate training records for certification purposes; to meet statistical reporting requirements of OPM, DOI and FWS; to generate class rosters, personnel transcripts, and budget estimates; and, to establish reservations on the NCTC campus.

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

The FWS is the primary user of the system, and the primary uses of the records will be:

(1) To validate training records for certification purposes.

(2) To meet statistical reporting requirements of OPM, DOI Office for Equal Employment Opportunity, and FWS.

(3) To generate class rosters.

(4) To generate requested personnel transcripts.

(5) To generate budget estimates related to training requirements.

(6) To manage lodging reservations at the NCTC.

(7) To identify training needs.

Disclosures outside DOI may be made under the routine uses listed below without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected.

(1) To another Federal agency, State office, or private organization only when necessary to respond to an inquiry by the individual to whom the record pertains.

(2) To the DOJ, or a court, adjudicative, or other administrative body or to a party in litigation before a court or adjudicative, or administrative body, when:

(a) One of the following is a party to the proceeding or has an interest in the proceeding:

(1) The DOI or any component of the DOI;

(2) Any DOI employee acting in his or her official capacity;

(3) Any DOI employee acting in his or her individual capacity where the DOI or DOJ has agreed to represent the employee; or

(4) The United States, when DOI determines that DOI is likely to be affected by the proceeding; and

(b) The Department deems the disclosure to be:

(1) Relevant and necessary to the proceedings; and

(2) Compatible with the purpose for which we compiled the information.

(3) To the appropriate Federal, State, tribal, local or foreign governmental agency that is responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, order or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license.

(4) To a congressional office in response to an inquiry to that office by the individual to whom the records pertain.

(5) To provide addresses obtained from the Internal Revenue Service to debt collection agencies for purposes of locating a debtor to collect or compromise a Federal claim against the debtor or to consumer reporting agencies to prepare a commercial credit report for use by the DOI.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)12. Disclosures may be made from this system to consumer reporting agencies as they are defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records will be maintained electronically with paper backup copies. The electronic copies are maintained on Redundant Array of Inexpensive Disks (RAID) Level 5 multi-disk stripped with parity disk subsystem. This online storage system allows protection of data even if one of the hard disks malfunctions. The electronic records are stored in an employee table database on the Training Server system.

Tape backup copies are created daily and, in accordance with FWS policy, they are saved for a period of 30 to 90 days and then deleted. Paper backup copies are stored in locked files.

RETRIEVABILITY:

Records are retrieved by either unique identifying fields such as student name or Social Security number or by general category such as course code, training location, and class start date. Electronic

retrieval is dependent upon the report or purpose of usage and whether a need to know exists. Records are retrieved for any of several purposes, such as determining enrollment numbers, reviewing the exact dates of enrollment in order to determine who requested the nomination first, affiliation for closed FWS-only courses, student addresses to mail out pre-course work, and determination of which FWS employees have received mandatory training.

SAFEGUARDS:

Access to records in the system is limited to authorized personnel only, in accordance with requirements found in the Code of Federal Regulations (43 CFR 2.51). The training server is a multi-level, password-protected database and file server system. Hard copy course files are locked on a daily basis and are only available to authorized personnel during business hours. Online web transactions are protected by secure socket layer 128-bit encryption.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Schedule (GRS–1). A copy of the records of Federal employees will be forwarded to their supervisor upon course completion to be included in their Official Personnel Folder.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Facility Operations, U.S. Fish and Wildlife Service, National Conservation Training Center, RR1 Box 166, Shepherd Grade Road, Shepherdstown, WV 25443, Attn: Information Technology and Registrar.

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to them, from the System Manager identified above. We require the request to be in writing, signed by the requester, and to include the requester's full name and address, and Social Security number. (See 43 CFR 2.60 for procedures on making inquiries).

RECORDS ACCESS PROCEDURES:

For copies of your records, write to the pertinent System Managers at the location above. The request envelope and letter should be clearly marked ''PRIVACY ACT REQUEST FOR ACCESS.'' A request for access must meet the content requirements of 43 CFR 2.63(b)(4)).

CONTESTING RECORD PROCEDURES:

Use the same procedures as ''Records Access Procedures'' section above. (See 43 CFR 2.71).

RECORD SOURCE CATEGORIES:

Records come from individuals who apply to take training courses either online or on paper, and are faxed, sent via the NCTC web site, or mailed to the training center. Another source of information for FWS employees comes from the Federal Personnel and Payroll System (FPPS). Bimonthly, a secured raw ASCII file containing FWS employees' names, Social Security numbers, organization codes, grades, steps, job titles, job series, supervisory levels, and service comp dates is mailed from FWS personnel to NCTC. Data is then electronically imported and reconciled against the existing data set. This is necessary to determine FWS employees who have an active status, but have not met mandatory training requirements.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–8837 Filed 4–10–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Cher-Ae Heights Indian Community of the Trinidad Rancheria Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Cher-Ae Heights Indian Community of the Trinidad Rancheria Liquor Control Ordinance. The Ordinance regulates the control, possession and sale of liquor on the Trinidad Rancheria trust lands, in conformity with the laws of the State of California, where applicable and necessary. Although the Ordinance was adopted on March 24, 2001, it does not become effective until published in the **Federal Register**, because the failure to comply with the ordinance may result in criminal charges.

DATES: This Ordinance is effective on April 11, 2002.

FOR FURTHER INFORMATION CONTACT: Kaye Armstrong, Office of Tribal Services, 1849 C Street, NW., MS 4631–MIB, Washington, DC 20240–4001; Telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transaction in Indian country. The Cher-Ae Heights Indian Community of the Trinidad Rancheria Liquor Control of the Trinidad Rancheria Community Council, governing body of the Trinidad Rancheria, on March 24, 2001. The Cher-Ae Heights Indian Community of the Trinidad Rancheria, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenue to combat alcohol abuse and its debilitating effects among individuals and family members within the Trinidad Rancheria.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

I certify that by Resolution No. G–007, the Cher-Ae Heights Indian Community of the Trinidad Rancheria Liquor Control Ordinance was duly adopted by the Cher-Ae Heights Indian Community of the Trinidad Rancheria Community Council, governing body of the Trinidad Rancheria, on March 24, 2001.

Dated: April 1, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

The Cher-Ae Heights Indian Community of the Trinidad Rancheria Liquor Control Ordinance, Resolution No. G–007, reads as follows:

Cher-Ae Heights Indian Community of the Trinidad Rancheria Community Council Ordinance No. G–007

I. Sale and Consumption of Alcoholic Beverages

The Community Council of the Cher-Ae Heights Indian Community of the Trinidad Rancheria (hereinafter Council), governing body of the Trinidad Rancheria (hereinafter Tribe), hereby enacts this Ordinance to govern the sale and consumption of alcoholic beverages on Rancheria lands.

II. Preamble

1. Title 18, United States Code, Section 1161, provides Indian tribes with authority to enact ordinances governing the consumption and sale of alcoholic beverages on their Reservations, provided such ordinance is certified by the Secretary of the Interior, published in the **Federal Register** and such activities are in conformity with state law.

2. Pursuant to Article 3 of the Articles of Association, the Community Council is the governing body of the Tribe with the power to enact ordinances to promote the general welfare and economic advancement of the Tribe and its members.

3. The Tribe is the owner and operator of a gaming facility located on the Rancheria known as the Cher-Ae Heights Bingo & Casino (hereinafter Facility), at which Class II and Class III Gaming is conducted pursuant to the Tribe's Gaming Ordinance and a Compact executed with the State of California on September 10, 1999, ratified by the California Legislature, approved by the Secretary of the Interior on May 5, 2000, and published in the **Federal Register** on May 16, 2000.

4. The Facility, located on trust land, is an integral and indispensable part of the Tribe's economy, providing income to the Tribe and training and employment to its members.

5. The Facility includes a restaurant and lounge area separate from the area in which Class III Gaming activity is conducted and at which food and beverages are provided to patrons (hereinafter referred to as Premises).

6. The Community Council has determined that it is now in its best interest to offer for sale and consumption in this specified Premises only alcoholic beverages.

7. It is the purpose of this Ordinance to set out the terms and conditions under which the sale of said alcoholic beverages may take place.

III. General Terms

1. The sale of alcohol within the Premises, for on-Premises consumption only, is hereby authorized.

2. No alcoholic beverages may be sold at any location on the Rancheria other than within the Premises. For the purpose of this section, the term Premises shall include only area within the perimeter of the restaurant and lounge, which shall be separate from any Class III gaming activity.

3. The sale of said alcoholic beverages authorized by this Ordinance shall be in conformity with all applicable laws of the State of California and applicable federal laws, and the sale of said beverages shall be subject to state sales tax, federal excise tax and any fees required by the Federal Bureau of Alcohol, Tobacco & Firearms. This includes but is not limited to the following examples:

a. No person under the age of 21 years shall consume, acquire or have in his or her possession at the Premises any alcoholic beverage.

b. No person shall sell alcohol to any person under the age of 21 at the Premises.

c. No person shall sell alcohol to a person apparently under the influence of liquor at the Premises.

4. Where there may be a question of a person's right to purchase liquor by reason of his or her age, such person shall be required to present any one of the following types of identification which shows his or her correct age and bears his or her signature and photograph: (1) Driver's license or identification card issued by any state Department of Motor Vehicles; (2) United States Active Duty Military card; (3) passport.

5. All liquor sales within the Premises shall be on a cash only basis and no credit shall be extended to any person, organization or entity, except that this provision does not prevent the use of major credit cards.

IV. Posting

This Ordinance shall be conspicuously posted within the Premises at all times it is open to the public.

V. Enforcement

1. The Gaming Commission may enforce this Ordinance by implementation of monetary fines not to exceed $500 and/or withdrawal of authorization to sell alcohol at the Premises. Prior to any enforcement action, Gaming Commission shall provide the alleged offender of this ordinance with at least three (3) days notice of an opportunity to be heard during a specially called meeting. The decision of the Gaming Commission shall be final.

2. This Ordinance also may be enforced by the Humboldt County Sheriff's Office at the request of the Gaming Commission.

VI. Severability

If any provision or application of this ordinance is determined by review to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this title or to render such provisions inapplicable to other persons or circumstances.

VII. Amendment

This ordinance may only be amended by a majority vote of the Community Council.

VIII. Sovereign Immunity

Nothing in this ordinance in any way limits, alters, restricts or waives the Tribe's sovereign immunity from unconsented suit or action.

IX. Effective Date

This Ordinance shall become effective following its certification by the Secretary of the Interior and its publication in the **Federal Register**.

[FR Doc. 02–8818 Filed 4–10–02; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement; Alcatraz Island Historic Preservation and Safety Construction; Golden Gate National Recreation Area, California, Notice of Approval of Record of Decision

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended) and the regulations promulgated by the Council on Environmental Quality (40 CFR Part 1505.2), the Department of the Interior, National Park Service has prepared and approved a Record of Decision for the Final Environmental Impact Statement for the Alcatraz Island Historic Preservation and Safety Construction Program, Golden Gate National Recreation Area. The no-action period was initiated October 26, 2001, with the U.S. Environmental Protection Agency's Federal Register (V66, N208, P54241) notification of the filing of the Final Environmental Impact Statement (FEIS).

Decision: As soon as practical the National Park Service will begin to implement the historic preservation and safety construction program described as the Proposed Action alternative contained in the FEIS, issued in October, 2001. This alternative was deemed to be the ''environmentally preferred'' alternative, and it was further determined that implementation of the selected actions will not constitute an impairment of park values or resources. This course of action and two additional alternatives were identified and analyzed in the Final and Draft Environmental Impact Statements (the latter was distributed in March 2001). The full range of foreseeable environmental consequences were assessed, and appropriate mitigation measures identified.

Copies: Interested parties desiring to review the Record of Decision may obtain a copy by contacting the Superintendent, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, CA 94123; or via telephone request at (415) 561–4936.

Dated: February 25, 2002.

John J. Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 02–8817 Filed 4–10–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Assessment for proposal to reconstruct the entrance station at Great Falls Park, Virginia

AGENCY: National Park Service, Interior.

ACTION: Availability of the Environmental Assessment for the reconstruction of the entrance station at Great Falls Park, Virginia.

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service policy, the National Park Service announces the availability of an Environmental Assessment for the reconstruction of the entrance station at Great Falls Park, a unit of the George Washington Memorial Parkway (GWMP). The existing entrance station is in major disrepair, has deficiencies with respect to accessibility, does not include a restroom facility, has unsafe pedestrian circulation patterns, and in its current form does not function to move incoming traffic through expeditiously, causing lengthy delays and long traffic backups. The Environmental Assessment examines several alternatives for reconstruction of the entrance station aimed to correct deficiencies with respect to improving access, providing a restroom and office/remit space for staff who work there, and providing better traffic flow into and out of the park. The National Park Service is soliciting comments on this Environmental Assessment. These comments will be considered in evaluating it and making decisions pursuant to the National Environmental Policy Act (NEPA).

DATES: The Environmental Assessment will remain available for public comment 30 days from the date of publication in the **Federal Register**. Written comments should be received no later than this date.

ADDRESSES: Comments on this Environmental Assessment should be submitted in writing to: Ms. Audrey F. Calhoun, Superintendent, George Washington Memorial Parkway, Turkey Run Park, McLean, Virginia 22101. The Environmental Assessment will be available for public inspection Monday through Friday, 8 a.m. through 4 p.m. at the Great Falls Park Visitor Center, Great Falls, Virginia; GWMP Headquarters, Turkey Run Park, McLean, Virginia; and at the following libraries: Dolly Madison Library, McLean, Virginia; Great Falls Library, Great Falls, Virginia; and Fairfax City Regional Library, Fairfax, Virginia.

SUPPLEMENTARY INFORMATION: The National Park Service proposes to construct a new accessible entrance station at Great Falls Park, Virginia, in replacement of the existing one. The new entrance station will correct the following:

1. The existing entrance station has deficiencies with respect to accessibility,
2. The existing entrance station does not provide a restroom facility for staff who work there,
3. The existing entrance station provides few security measures,
4. Pedestrian circulation around the existing building is currently unsafe for staff and visitors,
5. The existing entrance station is in major disrepair, and
6. Traffic trying to enter the park during high visitation periods, backs up on Old Dominion Drive, creating lengthy delays entering the park.

A related project will rehabilitate the existing roads and parking areas throughout the park. This includes minor road widening around the entrance station and the intersection of the entrance road with the lower parking lot access road. All interested individuals, agencies, and organizations are urged to provide comments on the Environmental Assessment. The National Park Service, in making a final decision regarding this matter, will consider all comments received by the closing date.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel E. Sealy (703) 289–2531.

Audrey F. Calhoun,

Superintendent, George Washington Memorial Parkway.

[FR Doc. 02–8815 Filed 4–10–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Summary of Record of Decision; Re-analysis of Cumulative Impacts on the Sonoran Pronghorn; Supplemental Environmental Impact Statement

Organ Pipe Cactus National Monument; Arizona

The Department of the Interior, National Park Service, has prepared a Record of Decision on the *Final Supplemental Environmental Impact Statement, Re-analysis of Cumulative Impacts on the Sonoran Pronghorn* for Organ Pipe Cactus National Monument. The Record of Decision includes a brief planning history, the alternatives considered, the methodology used in the decision-making process, findings of the supplement, findings on impairment of park resources and values, basis for the decision, a description of the environmentally preferred alternative, an overview of public and agency involvement in the decision-making process, and measures to minimize harm. This notice serves as a summary of the Record of Decision and does not constitute the decision document. For a copy of the Record of Decision, please contact Laurie Domler, Planning and Environmental Compliance, NPS Intermountain Region, P.O. Box 25287, Denver, CO 80225–0287, or by e-mail at *Laurie—Domler@nps.gov.*

Planning History

The General Management Plan/Development Concept Plan/Environmental Impact Statement (GMP/DCP/EIS) for Organ Pipe Cactus National Monument was completed in 1997. The GMP/DCP/EIS looked at a range of alternatives for management of park resources and visitation as well as the appropriateness and location of needed facilities. The NPS initially presented a range of three alternatives that were presented in Draft and Supplemental Environmental Impact Statements. A fourth alternative and the selected action, the *New Proposed Action,* was developed by combining concepts and actions from the other alternatives.

During the general management planning process, the NPS entered into formal consultation with the United States Fish and Wildlife Service (USFWS) through its May 22, 1996 submittal of a biological assessment. The biological assessment examined the effects on four endangered species in the park, including the Sonoran pronghorn. The analysis of the Sonoran pronghorn indicated that there were no proposed actions in the GMP/DCP/EIS that would directly effect the pronghorn. However, it was found that increased visitor use may lead to indirect effects on the Sonoran pronghorn if human presence in the front- and backcountry causes an alternation in behavior and habitat use. The potential for increased traffic on Highway 85 was also examined. Past observations of pronghorn movements suggested that traffic along Highway 85 acts as a barrier to pronghorn, restricting their movements across the highway.

The biological assessment concluded that existing and future road conditions along Highway 85 would continue to act as a barrier to pronghorn movements. It stated that '' . . . these actions may adversely affect Sonoran pronghorn if it leads to a reduction in genetic exchange and reduced viability, potentially eliminating populations from this portion of their range.'' The USFWS Biological Opinion concluded with a number of reasonable and prudent measures proposed to help reduce the impact on the Sonoran pronghorn. The USFWS issued a biological opinion on the NPS assessment on June 26, 1997. The opinion stated that the plan was "'.not likely to jeopardize the continued existence of the Sonoran pronghorn.''

A Record of Decision on the Organ Pipe Cactus National Monument General Management Plan/Development Concept Plan/Environmental Impact Statement selecting the *New Proposed Action* was signed on 28 January 1998.

On June 30, 1999, Defenders of Wildlife, et al., filed suit in Federal District Court (Defenders of Wildlife, et al. vs. Babbitt, et al., Civil Action No. 99–927) against the National Park Service, Bureau of Land Management, U.S. Fish and Wildlife Service (USFWS), U.S. Air Force, U.S. Marine Corps, National Guard, and the U.S. Border Patrol, charging that those agencies violated the Endangered Species Act and the National Environmental Policy Act (NEPA) by failing to protect the Sonoran pronghorn. On February 12, 2001, the Court ruled, in part, that the USFWS issued Biological Opinions that failed to address the impact of each defendant's activities on the pronghorn when added to the environmental baseline. The Court also ruled that the NPS issued an Environmental Impact Statement (of the *GMP/DCP/EIS*) that failed to address the cumulative impacts of their activities on the Sonoran pronghorn, when added to other past, present, and reasonable foreseeable future actions, regardless of what agency undertakes those actions.

Alternatives Considered

Pursuant to the Court order, the National Park Service re-evaluated cumulative impacts of the no action, and the selected action contained in the *GMP/DCP/EIS* and approved in the 1998 Record of Decision. In order to present the current environmental baseline at the monument, Alternative (A) *Existing Conditions/No Action,* was updated with those actions, authorized by the plan, that have either occurred since its approval or are currently underway. Alternative (B) *The New Proposed Action,* appears exactly as it did in the approved GMP/DCP/EIS.

Findings of the Supplement

The National Park Service has found that both the no action alternative and the preferred alternative (Alternative B: *The New Proposed Action*), when combined with past, present, and foreseeable future federal and non-federal actions, would likely result in a continued, incremental reduction in the ability of Sonoran pronghorn to maintain a viable population in the United States. Although the NPS contributes to a fraction of the overall impact on Sonoran pronghorn, increasing human presence in the form of monument visitors; undocumented aliens; travelers on Highway 85; and law enforcement officers constitute the greatest amount of adverse impacts on the pronghorn that the monument adds to the cumulative scenario.

Findings on Impairment

The cumulative impacts of this alternative have been determined to result in major adverse effects to the existing and future Sonoran pronghorn population in the United States. The loss of one or more Sonoran pronghorn would be a major adverse effect to a park resource. However, that loss would not be an impairment of park resources and values.

Basis of the Decision

After careful consideration of the findings of the supplement, USFWS conservation measures and recommendations, and public comment, the NPS has decided to continue to implement the *New Proposed Action* alternative that was selected through the 1998 Organ Pipe Cactus National Monument GMP/DCP/EIS Record of Decision. This decision is based on the following factors:

- The alternative continues to best achieve applicable NPS laws and policies, including the dual statutory NPS mandate to ensure long-term natural and cultural resource preservation while allowing for appropriate levels of visitor use, appropriate means of visitor enjoyment, and improved operational efficiency ;
- The alternative continues to be the option that best reconciles the many needs and desires expressed by extremely diverse public interest groups, including neighboring communities; Native Americans; advocacy groups; regional, state, and national publics; and multiple local, state, and Federal permitting authorities and agencies;
- The conservation measures agreed upon by the NPS and the USFWS consist largely of modifications to park operations that are administrative in nature and are not the type of actions that would require amendments or revisions to the GMP/DCP/EIS.

Conclusion

The Environmental Impact Statement provides the National Park Service findings of the cumulative impacts of past, present, and foreseeable future federal and non-federal actions on the Sonoran pronghorn. In addition, consultation between the National Park Service and the U.S. Fish and Wildlife Service has resulted in conservation measures, approved in the November 16, 2001 Final Biological Opinion and included in the record, that are proposed to minimize the incidental take of Sonoran pronghorn. The continued implementation of the *New Proposed Action* alternative would not result in the impairment of park resources and would allow the National Park Service to conserve park resources and would allow the National Park Service to conserve park resources and provide for their enjoyment by visitors.

Dated: March 11, 2002.

William E. Wellman,

Superintendent, Organ Pipe Cactus National Monument.

Dated: March 15, 2002.

Karen P. Wade,

Director, Intermountain Region.

[FR Doc. 02–8816 Filed 4–10–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Impact Statement for the Great Smoky Mountains National Park

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement for the Cades Cove Development Concept and Transportation Management Plan for Great Smoky Mountains National Park.

SUMMARY: In accordance with Section 102(2)(C) of the National Environmental Policy Act (42 USC 4321 *et. seq.*), the National Park Service (NPS) is undertaking an analysis process to determine the visitor experience and transportation requirements of the Cades Cove area of great Smoky Mountains National Park. This analysis, the Cades Cove Development Concept and Transportation Management Plan and Environmental Impact Statement

(EIS), will identify and assess potential impacts of alternative transportation management concepts and modes of travel to and within the Cades Cove area of the Park. The goal of this plan is to enhance the visitor experience and protect park resources. Notice is hereby given that a public scoping process has been initiated to prepare the Cades Cove Development Concept and Transportation Management Plan and EIS. The purpose of the scoping process is to elicit public comment regarding the full spectrum of public issues and concerns, including a suitable range of alternatives, the nature and extent of potential environmental impacts, and appropriate mitigation strategies which should be addressed in the EIS process.

DATES: Beginning in Spring, 2002, public scoping meetings will be conducted in the vicinity of Great Smoky Mountains National Park. The location, date, and time of scoping meetings and deadlines for written comments will be announced via local and regional media and appropriate Internet locations. All interested individuals, organizations, and agencies are invited to attend these meetings to comment orally and/or provide written comments or suggestions during the scoping period.

ADDRESSES: Additional comments, suggestions, or relevant information (or those wishing to be added to the mailing list) should be mailed or hand delivered to the attention of Cades Cove Development Concept and Transportation Management Plan and EIS, Great Smoky Mountains National Park, 107 Park Headquarters Road, Gatlinburg, TN 37738.

FOR FURTHER INFORMATION CONTACT: Michael Tollefson, Superintendent, Great Smoky Mountains National Park (865) 436–1207 or Fax (865) 436–1220.

SUPPLEMENTARY INFORMATION: The purpose of this planning initiative is to develop a long-term Development Concept and Transportation Management Plan and EIS for the Cades Cove area of Great Smoky Mountains National Park. The Plan and EIS will examine local, natural and cultural resources, existing Park facilities and infrastructure, current and projected visitation trends, and incorporate a public involvement plan in developing a range of alternatives and transportation strategies that improve the visitor experience.

Cades Cove is located within Great Smoky Mountains National Park in southeastern Tennessee. The study area lies within Blount County, Tennessee, which is part of the Knoxville Regional Transportation Planning Organization's designated planning area. Visitation in the Cove has tripled in the last 20 years, and has doubled since 1990, with more than 2.1 million visitors annually. Fifty percent of the time during peak summer and fall seasons, the Cove's Loop Road is very congested.

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 record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the 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. 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.

Availability of the draft Cades Cove Development Concept and Transportation Management Plan and EIS for review and written comment will be announced by **Federal Register** notice, via the news media, appropriate Internet locations, Web site, and direct mailing to the project mailing list. At the time the draft Cades Cove Development Concept and Transportation Management Plan and EIS is anticipated to be available for public review in 2004. To afford additional opportunity to comment on the draft Cades Cove Development Concept and Transportation Management Plan and EIS after it is distributed, public meetings will be held in the vicinity of Great Smoky Mountains National Park (dates and locations to be determined).

Dated: February 27, 2002.

Patricia A. Hooks,

Regional Director, Southeast Region.

[FR Doc. 02–8623 Filed 4–10–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Kaloko-Honokohau National Historical Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Na Hoapili O Kaloko Honokohau, Kaloko-Honokohau National Historical Park Advisory Commission will be held at 9 a.m., April 27, 2002 at the Kaloko-Honokohau National Historical Park headquarters, 73–4786 Kanalani St. Suite 14, Kailua-Kona, Hawaii.

The agenda will include the following: Update on Park Projects, Construction of Halau for Live-In Cultural Area, Park Brochure, Commission Vacancies and New Appointees, the General Management Plan progress, and Budget.

The meeting is open to the public. Minutes will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. Transcripts will be available after 30 days of the meeting.

For copies of the minutes, contact Kaloko-Honokohau National Historical Park at (808) 329–6881.

Dated: February 22, 2002.

Geraldine K. Bell,

Superintendent, Kaloko-Honokohau National Historical Park.

[FR Doc. 02–8813 Filed 4–10–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Manzanar National Historic Site; Notice of Meeting

Notice is hereby given that a public meeting of the Manzanar National Historic Site will be held at 1:00 p.m. on Friday April, 26, 2002 at the Sierra Baptist Church Social Hall, 346 North Edwards Street (U.S. Highway 395), Independence, California, to hear presentations on issues related to the planning, development, and management of Manzanar National Historic Site.

The main agenda will include:

- Status reports on the development of Manzanar National Historic Site by Superintendent Frank Hays;
- General discussion of miscellaneous matters pertaining to future activities and Manzanar National Historic Site development issues;
- Public comment period.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the Superintendent. For a copy of the minutes, contact the Superintendent, Manzanar National Historic Site, P.O. Box 426, Independence, CA 93526.

Dated: March 20, 2002.

Frank R. Hays,

Superintendent, Manzanar National Historic Site.

[FR Doc. 02–8814 Filed 4–10–02; 8:45 am]

BILLING CODE 4370–70–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; FY 2002 Community Policing Discretionary Grants

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of availability of the Finding of No Significant Impact and the Environmental Assessment.

SUMMARY: The Environmental Assessment, which is available to the public, concludes that the methamphetamine investigation and clandestine laboratory closure activities of the Methamphetamine/Drug Hot Spots Program will not have significant impact on the quality of the human environment.

ADDRESSES: For copies of the Environmental Assessment and the Finding of No Significant Impact, please contact: COPS Grants Administration Division, 1100 Vermont Avenue, NW., Washington, DC 20530; Phone: (202) 616–3031 or 1–800–421–6770.

FOR FURTHER INFORMATION CONTACT: The U.S. Department of Justice Response Center, 1–800–421–6770 and ask to speak with your Grant Program Specialist.

SUPPLEMENTARY INFORMATION: In Fiscal Year 2000, the COPS Office collaborated with the Bureau of Justice Assistance and the Drug Enforcement Administration, Department of Justice, to prepare an Environmental Assessment for methamphetamine law enforcement programs, and with specific application for the Methamphetamine/Drug Hot Spots Program. This Environmental Assessment was prepared as required by the Council on Environmental Quality's regulations (40 CFR Parts 1500 through 1508), implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et al.*) The Methamphetamine/Drug Hot Spots Program addresses a broad array of law enforcement initiatives pertaining to the investigation of methamphetamine trafficking in many heavily impacted areas of the country. For the purposes of this program, law enforcement may include training of law enforcement officers in methamphetamine-related issues; collection and maintenance of intelligence and information relative to methamphetamine trafficking and traffickers; investigation, arrest and prosecution of producers, traffickers and users of methamphetamine; interdiction and removal of laboratories, finished products, and precursor chemicals and other elements necessary to produce methamphetamine; and preventive efforts to reduce the spread and use of methamphetamine. Individual projects will reflect a concentration on program areas consistent with Congressional appropriations.

Among the many challenges faced by law enforcement agencies in the Methamphetamine/Drug Hot Spots Program will be discovery, interdiction, and dismantling of clandestine drug laboratories. These lab sites, as well as other methamphetamine crime venues must be comprehensively dealt with in compliance with a variety of health, safety and environmental laws and regulations. The COPS Office requires that recipients, when encountering illegal drug laboratories, use grant funds to effect the proper removal and disposal of hazardous materials located at those laboratories and directly associated sites in accordance with all applicable laws and regulations.

Overview

Environmental Assessment

The COPS Office will award grants to State and local criminal justice agencies for the FY 2002 COPS Methamphetamine/Drug Hot Spots Program. The Environmental Assessment concludes that the funding of this program will not have a significant impact on the quality of the human environment. Therefore, an Environmental Impact Statement will not be prepared for the funding of this program.

Dated: March 21, 2002.

Carl R. Peed,

Director, Office of Community Oriented Policing Services.

[FR Doc. 02–8752 Filed 4–10–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Notice is hereby given that on March 12, 2002, a proposed Consent Decree in *United States* v. *A–L Processors, f.k.a. Atlas-Lederer Co., et al.*, Civil Action No. C–3–91–309, was lodged with the United States District Court for the Southern District of Ohio.

In this action the United States seeks the reimbursement of response costs in connection with the United Scrap Lead Superfund Site in Troy, Miami County, Ohio (''Site'') pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.* The Consent Decree resolves the United State' claims against defendants Beckner Iron & Metal, Decatur Salvage Inc., Ebner & Sons Co., Inc., Mid-Ohio Battery Inc., the Ohio Department of Transportation, and United Salvage Co., Inc., for response costs incurred as a result of the release or threatened release of hazardous substances at the Site. Five of these settlements are ''ability-to-pay'' settlements based on financial analyses conducted by the Department's Antitrust Corporate Finance Unit. One settlement, with the Ohio Department of Transportation (''ODOT''), was agreed to in principle in early 2000 based on ODOT's relative contribution of waste to the Site, but could not be finalized in time for inclusion in a prior Consent Decree executed in April 2000. The six settling parties collectively will pay the United States $93,595. The United States' remaining outstanding costs exceed $8,500,000 and are being sought from the eleven remaining defendants in this case.

The Consent Decree also resolves the United Scrap Lead Respondent Group's (''Respondent Group'') CERCLA claims against the same parties for response costs incurred by the Respondent Group in cleaning up the Site under an earlier Consent Decree. The settling parties will pay the Respondent Group a total of $64,247.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, PO Box 7611, Washington, DC 20044, and should refer to *United States* v. *A–L Processors, f.k.a. Atlas-Lederer Co., et al.,* D.J. Ref. 90–11–3–279B.

The Consent Decree may be examined at the Office of the United States Attorney, Southern District of Ohio, Federal Building Room 602,200 West Second Street, Dayton, Ohio, or at the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60606–3590. A copy of the proposed Consent Decree may also be obtained in person or by mail from the Consent Decree Library,

1425 New York Ave, NW., Washington, DC 20044–7611, or by faxing Tonia Fleetwood at (202) 616–6584. In requesting a copy, please enclose a check in the amount of $6.75 (27 pages at 25 cents per page reproduction cost) payable to the Consent Decree Library.

Bruce Gelber,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–8739 Filed 4–10–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on March 12, 2002, a proposed Consent Decree in *United States* v. *A–L Processors, f.k.a. Atlas—Lederer Co., et al.*, Civil Action No. C–3–309, was lodged with the United States District Court for the Southern District of Ohio.

In this action the United States seeks the reimbursement of response costs in connection with the United Scrap Lead Superfund Site in Troy, Miami County, Ohio (''the Site'') pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.* The Consent Decree resolves the United States' claims against defendants Beckner Iron & Metal, Decatur Salvage Inc., Ebner & Sons Co., Inc., Mid-Ohio Battery Inc., the Ohio Department of Transportation, and United Salvage Co., Inc., for response costs incurred as a result of the release of threatened release of hazardous substances at the Site. Five of these settlements are ''ability-to-pay'' settlements based on financial analyses conducted by the Department's Antitrust Corporate Finance Unit. One settlement, with the Ohio Department of Transportation (''ODOT''), was agreed to in principle in early 2000 based on ODOT's relative contribution of waste to the Site, but could not be finalized in time for inclusion in a prior Consent Decree executed in April 2000. The six settling parties collectively will pay the United States $93,595. The United States' remaining outstanding costs exceed $8,500,000 and are being sought from the eleven remaining defendants in this case.

The Consent Decree also resolves the United Scrap Lead Respondent Group's (''Respondent Group'') CERCLA claims against the same parties for response costs incurred by the Respondent Group in cleaning up the Site under an earlier Consent Decree. The settling parties will pay the Respondent Group a total of $64,247.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044, and should refer to *United States* v. *A–L Processors, f.k.a. Atlas-Lederer Co., et al.* D.J. Ref. 90–11–3–279B.

The Consent Decree may be examined at the Office of the United States Attorney, Southern District of Ohio, Federal Building Room 602, 200 West Second Street, Dayton, Ohio, or at the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604–3590. A copy of the proposed Consent Decree may also be obtained in person or by mail from the Consent Decree Library, 1425 New York Ave, NW, Washington, DC 20044–7611, or by faxing Tonia Fleetwood at (202) 616–6584. In requesting a copy, please enclose a check in the amount of $6.75 (27 pages at 25 cents per page reproduction cost) payable to the Consent Decree Library.

W. Benjamin Fisherow,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–8741 Filed 4–10–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *William R. Aliff, Representative of the Estate of Elwin Eugene Aliff* (S.D.W.Va.), C.A. No. 1:02–0279, was lodged on March 26, 2002, with the United States District Court for the Southern District of West Virginia. The Consent Decree resolves the United States' claims against the defendant, as representative of the Estate of Elwin Eugene Aliff (''Estate''), with respect to response costs incurred, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9607. These costs were incurred by the Environmental Protection Agency (''EPA'') in connection with the clean-up of the Route 52 Site, located in Bluefield, Mercer County; West Virginia.

The Consent Decree represents an ability-to-pay settlement with the Estate. The Consent Decree provides, *inter alia*, that the defendant, on behalf of the Estate, will: (a) Pay EPA $30,380.00 in cash within 30 days of entry of the Consent Decree by the Court and (b) sell/transfer the portion of the Site property owned by the Estate and pay EPA from the proceeds of the sale/transfer, pursuant to the terms of the Consent Decree. Further, the Federal Deposit Insurance Corporation has issued a Receiver's Certificate of Proof of Claim to the Estate (''FDIC Claim''), based upon funds the decedent had on deposit in a bank that failed, and the FDIC is currently pursuing litigation against certain persons in connection with the failed bank to recover depositor's funds. The present value of the Estate's FDIC Claim is $440,500. The defendant agreed to assign and transfer 60% of the FDIC Claim to EPA, and the FDIC has approved the assignment and transfer.

The Department of Justice will receive, for a period of 30 days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *William R. Aliff, Representative of the Estate of Elwin Eugene Aliff* (S.D.W.Va.), C.A. No. 1:02–0279, and DOJ Reference No. 90–11–2–207/1.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 300 Virginia Street-East, Room 4000, Charleston, West Virginia 25301; and the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029. A copy of the proposed Consent Decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $16.75 (.25 cents per page production costs), payable to the Consent Decree Library.

Robert D. Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–8740 Filed 4–10–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on March 28, 2002, a proposed Consent Decree (''Decree'') in *United States* v. *Daniel E. Caulk and RAMP Industries, Inc.*, Civil Action No. 02–D–0625, was lodged with the United States District Court for the District of Colorado. The action was filed pursuant to Section 107(a)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607(a)(2), for costs EPA incurred in responding to the release or threatened release of hazardous substances at or from the RAMP Industries Site in Denver, Colorado. Under the terms of the Decree the settling defendants will pay the United States $95,000 over four years, with interest on the outstanding principal balance accruing at the statutory rate.

The Department of Justice will receive comments relating to the Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, and sent to the Denver Field Office, 999 18th Street, Suite 945NT, Denver, CO 80202, and should refer to *United States* v. *Daniel E. Caulk and RAMP Industries, Inc.*, D.J. Ref. 90–11–2–1290/7.

The Decree may be examined at the offices of the EPA Library, EPA Region VIII, located at 999 18th Street, First Floor, Denver, Colorado 80202. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $5.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–8742 Filed 4–10–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Revised Notice of Lodging of Consent Decree: Natural Resource Damages Under the Oil Pollution Act of 1990

Notice is hereby given that on March 18, 2002, a proposed Consent Decree: Natural Resource Damages (''Decree'') in *United States and State of Alaska* v. *Kuroshima Shipping, S.A. and Unique Trading Co., Ltd.,* Civil Action No. A02–0057 (JKS), was lodged with the United States District Court for the District of Alaska.

In this action brought pursuant to Section 1002(b)(2)(A) of the Oil Pollution Act of 1990, 33 U.S.C. 2702(b)(2)(A), the United States and the State of Alaska sought natural resource damages, including the reasonable costs of assessing those damages, arising out of the November 26, 1997 grounding and subsequent discharge of oil from the M/V Kuroshima in the area of Summer Bay, Unalaska Island, Alaska (''the Kuroshima Spill''). The defendants are the owner and operator of the vessel at the time of the incident. The federal and state natural resource trustees, in consultation with the Qawalangin Tribe of Unalaska, conducted an assessment of damage to natural resources and loss of use of natural resources occasioned by the Kuroshima Spill and have proposed a plan for restoring these natural resources and the loss of their use by the public. That plan appears as Appendix A to the Decree. The proposed Decree provides that defendants shall pay $644,017 to the natural resource trustees for their implementation of the restoration plan and shall place another $9,000 in the registry of the Court until the natural resource trustees determine whether that amount is necessary for the field component of the restoration plan aimed at restoring vegetation or may be returned to the defendants. The proposed Decree requires that the defendants reimburse the natural resource trustees in excess of $66,158.09 for damage assessment costs. In exchange for these payments, the United States and the State of Alaska covenant not to sue the defendants for natural resource damages arising from the Kuroshima Spill.

The Department of Justice will accept comments relating to the proposed Decree through April 29, 2002. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice and sent to 801 B Street, Suite 504, Anchorage, Alaska 99501–3657. Comments should refer to *United States* v. *Kuroshima Shipping, S.A. et al.,* D.J. Ref # 90–5–1–1–06147.

The Decree may be examined at the above address by contacting Lorraine Carter at 907–271–5452. A copy of the Decree (minus Appendix A) may be obtained by contacting Ms. Carter in writing at the address above. In requesting a copy, please enclose a check in the amount of $5.50 (25 cents per page reproduction cost) payable to the U.S. Treasury. A copy of Appendix A may be obtained during the comment period from the National Oceanic and Atmospheric Administration by contacting Doug.Helton at 206–526–4563 or at *Doug.Helton@noaa.gov.* Alternatively, Appendix A may be viewed at *www.darcnw.noaa.gov/kuro.htm.*

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–8743 Filed 4–10–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation and Liability Act, and the Emergency Planning and Community Right-to-Know Act

In accordance with 28 CFR 50.7, notice is hereby given that on April 1, 2002, a proposed consent decree in *United States and the State of Illinois* v. *The Premcor Refining Group, Inc.,* Civil Action No. 98–C–5618, was lodged with the United States District Court for the Northern District of Illinois.

In this action, the United states sought civil penalties and injunctive relief for alleged environmental violations at The Premcor Refining Group, Inc.'s refinery in Blue Island, Illinois. The United States' complaint alleges violations of the following five federal statutes (and federal and state laws implementing them): Clean Air Act (''CAA''), 42 U.S.C. 7401 *et seq.*, Clean Water Act (''CWA''), 33 U.S.C. 1311 *et seq.*, the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6901 *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.*; and the Emergency Planning and Community Right-To-Know Act (''EPCRA''), 42 U.S.C. 11001 *et seq.* Under the terms of the proposed consent decree, Premcor will pay a civil penalty of $6,250,000 to resolve the

claims of the United States and the State of Illinois. The settlement proceeds will be split evenly between the United States and the State.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, PO Box 7611, Washington, D.C. 20044–7611, and should refer to *United States* v. *The Premcor Refining Group, Inc. (f/k/a Clark Refining and Marketing, Inc.*), Civil Action No. 98–C–5618 and Department of Justice Reference No. 90–5–2–1–2214.

The proposed consent decree may be examined at the Office of the United States Attorney, North District of Illinois, 219 South Dearborn Street, Chicago, Illinois 60604, and the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. A copy of the Consent Decree may also be obtained in person or by mail from the Consent Decree Library, 1425 New York Ave., NW. Washington, DC 20005, or by faxing a request to Tonia Fleetwood at (202) 616–6584, phone confirmation number (202) 515–1547. In requesting a copy, please refer to the above-referenced case name, civil action number and Department of Justice reference number, and enclose a check in the amount of $9.50 (25 cents per page reproduction costs), payable to the U.S. Treasury.

William Brighton,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. 02–8744 Filed 4–10–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

In accordance with Department policy, 28 C.F.R. 50.7, notice is hereby given that on March 26, 2002, a proposed consent decree in *United States* v. *Texaco Exploration and Production Inc.,* Civil No. 2:98–CV–00213–ST, was lodged with the United States District Court for the District of Utah.

This consent decree represents a settlement of claims brought against Texaco Exploration and Production Inc. (''Texaco'') under Sections 309 and 311 of the Clean Water Act (''CWA''), 33 U.S.C. 1319 and 1321, in a civil complaint filed on March 26, 1998. The complaint alleged the following: (1) Texaco violated CWA Section 301 by unauthorized discharges of produced water and mixed oil and produced water from its oil and gas production field in Aneth, Utah (the ''Aneth Unit'') into waters of the U.S.; (2) Texaco violated CWA Section 311 by discharging a mix of oil and produced water from the Aneth Unit into waters of the U.S. and adjoining shorelines; and (3) in violation of CWA Section 311(j) and 40 CFR Part 112, Texaco failed to prepare an adequate Spill Prevention Control and Countermeasure (''SPCC'') Plan, failed to adequately implement the SPCC plan, and failed to provide notification to EPA of oil spills from the Aneth Unit.

Under the proposed settlement, Texaco is required to implement a series of measures as injunctive relief including: rerouting of flowlines; construction of berming; replacement of pipelines; installation of stuffing box leak detectors on producing wells; construction of overflow tanks; and installation of emergency shutdown equipment on producing wells, the injection distribution system, and the production transfer system. Texaco will also submit a revised SPCC Plan and fully implement the Plan. Texaco is also required to provide for the construction and implementation of two Supplemental Environmental Projects, at an estimated cost of $478,700, to provide an adequate supply of drinking water and sanitary facilities for residents in the vicinity of Montezuma Creek, Utah, on the Navajo Nation. Finally, Texaco will pay a civil penalty of $369,922.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Divisions, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Texaco Exploration and Production Inc.,* DOJ Ref. 90–5–1–1–4457/1. A copy of any comments should be sent to Robert D. Mullaney, U.S. Department of Justice, 301 Howard St., Suite 1050, San Francisco, CA 94105.

The proposed consent decree may be examined at the Office of the United States Attorney, 185 South State Street, Suite 400, Salt Lake City, Utah 84111, and at the Office of Regional Counsel, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, or by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 514–0097; phone confirmation no. (202) 514–1547. There is a charge for the copy (25 cent per page reproduction cost). In requesting a copy, please enclose a check in the amount of $36.00 payable to the ''U.S. Treasury.'' (A copy of the decree, exclusive of attachments, may be obtained for $8.75.)

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–8753 Filed 4–10–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Permissible Equipment Testing

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95)(44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before June 10, 2002.

ADDRESSES: Send comments to David L. Meyer, Director, Office of Administration and Management, 4015 Wilson Boulevard, Room 615, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to *Meyer-David@msha.gov,* along with an original printed copy. Mr. Meyer can be reached at (703) 235–1383 (voice), or (703) 235–1563 (facsimile).

FOR FURTHER INFORMATION CONTACT: Charlene N. Barnard, Regulatory Specialist, Records Management Division, U.S. Department of Labor, Mine Safety and Health Administration,

Room 725, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Ms. Barnard can be reached at *barnard-charlene@msha.gov* (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

The Mine Safety and Health Administration (MSHA) is responsible for the inspection, testing, approval and certification, and quality control of mining equipment and components, materials, instruments, and explosives used in both underground and surface coal, metal, and nonmetal mines. Title 30 CFR, parts 15 through 36 contain procedures by which manufacturers may apply for and have equipment approved as ''permissible'' for use in mines.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Permissible Equipment Testing. MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request may be viewed on the Internet by accessing the MSHA Home Page (*http://www.msha.gov*) and selecting ''Statutory and Regulatory Information'' then ''Paperwork Reduction Act submission (*http://www.msha.gov/regspwork.htm*)'', or by contacting the employee listed above in the **FOR FURTHER INFORMATION CONTACT** section of this notice for a hard copy.

III. Current Actions

Title 30 CFR Parts 15 through 36 require that an investigation leading to approval or certification will be undertaken by the A&CC only pursuant to a written application accompanied by prescribed drawings and specifications identifying the piece of equipment. This information is used by engineers and scientists to evaluate the design in conjunction with tests to assure conformance to standards prior to approval for use in mines.

Types of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Permissible Equipment Testing.

OMB Number: 1219–0066.

Affected Public: Business or other for-profit.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response	Burden hours (in hours)
Part 15	6	On occasion	6		11
Part 18	474	On occasion	474	1 hr. 50 min.	1,760
Part 19	3	On occasion	3	11 hrs. 36 min.	21
Part 20	5	On occasion	8	8 hrs	51
Part 22	17	On ocassion	11	9 hrs. 38 min.	42
Part 23	5	On occasion	5	8 hrs. 15 min.	24
Part 27	9	On occasion	9	8 hrs. 45 min.	30
Part 28	2	On occasion	2	13 hrs. 20 min.	20
Part 29	2	On occasion	2	10 hrs.	20
Part 33	11	On occasion	11	6 hrs. 30 min.	113
Part 35	2	On occasion	2	25 hrs.	49
Part 36	58		58	8 hrs. 44 min.	805
Totals	594		594		2,946

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $443,891.57.

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: April 2, 2002.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 02–8767 Filed 4–10–02; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL1–88]

MET Laboratories, Inc.; Applications for Renewal and Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the applications of MET Laboratories, Inc., for renewal of its recognition as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7, and for expansion of its recognition to include additional test standards, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of these applications.

DATES: Comments submitted by interested parties, or any request for extension of the time to comment, must be received no later than April 26, 2002.

ADDRESSES: Submit written comments concerning this notice to: Docket Office, Docket NRTL1–88, U.S. Department of Labor, Occupational Safety and Health Administration, Room N2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648. Submit requests for extensions concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL

Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet or Sherrey Nicolas, Office of Technical Programs and Coordination Activities, NRTL Program, Room N3653 at the above address, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that MET Laboratories, Inc. (MET), has applied for renewal and for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL). MET's expansion requests cover the use of two additional test standards. OSHA's current scope of recognition for MET may be found in the following informational web page: *http://www.osha-slc.gov/dts/otpca/nrtl/met.html.*

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in §1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products ''properly certified'' by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. We maintain an informational web page for each NRTL, which details its scope of recognition. These pages can be accessed from our Web site at *http://www.osha-slc.gov/dts/otpca/nrtl/index.html.*

The most recent notice published by OSHA for MET's recognition covered an expansion of recognition to include additional standards, which became effective on September 26, 2001 (66 FR 49211). The other **Federal Register** notices related to MET's recognition that OSHA has published, since MET's previous renewal of recognition, addressed an expansion for additional standards, which was announced on November 10, 1998 (63 FR 63085), and granted on March 9, 1999 (64 FR 11502). The renewal would incorporate all of these recognitions granted to MET.

The current address of the MET facility (site) already recognized by OSHA is: MET Laboratories, Inc., 914 West Patapsco Avenue, Baltimore, Maryland 21230.

General Background on the Applicant and Applications

MET Laboratories, Inc., was incorporated in Baltimore, Maryland, in October, 1959, as Eastern Electrical Testing Laboratories. The name was changed one year later to Maryland Electrical Testing Company. The name changed again to MET Electrical Testing Company in 1973. MET Electrical Testing Company applied to OSHA for recognition as a Nationally Recognized Testing Laboratory in April 1988. On May 16, 1989 (54 FR 21136), it received this initial recognition.

Appendix A to 29 CFR 1910.7 stipulates that the period of recognition of an NRTL is five years and that an NRTL may renew its recognition by applying not less than nine months, nor more than one year, before the expiration date of its current recognition. NRTLs submitting requests within this allotted time period retain their recognition during OSHA's renewal process. Under its current name, MET Laboratories, Inc., it applied for its first renewal of recognition in August 1993, which OSHA announced, along with other MET applications, on August 6, 1996 (61 FR 41661). OSHA granted the renewal on November 20, 1996 (61 FR 59114).

MET has submitted a request, dated February 9, 2001 (see exhibit 28), to renew its recognition, within the allotted time period, and retains its recognition pending OSHA's final decision in this renewal process. MET's existing scope of recognition consists of the facility listed above, and the test standards and supplemental programs listed below under *Renewal of Recognition.*

Also, MET has submitted a request, dated February 13, 2002 (see exhibit 28–1), to expand its recognition to include two additional test standards. The OSHA NRTL Program Staff has determined that it can grant recognition for the two test standards listed below under *Expansion of Recognition* because it has determined the standards are ''appropriate test standards,'' within the meaning of 29 CFR 1910.7(c). The staff makes such determinations in processing applications from any NRTL.

Renewal of Recognition

MET seeks renewal of its recognition for the one site that OSHA has previously recognized. In processing MET's renewal request, OSHA NRTL Program staff performed an on-site review of MET's facility on October 1 and 3, 2001. In the on-site review report (see Exhibit 29), the staff recommended a ''positive finding,'' which means a positive recommendation to the Assistant Secretary regarding the renewal.

MET also seeks renewal of its recognition for testing and certification of products for demonstration of conformance to the following 102 test standards, which OSHA has previously recognized for MET. Except as explained below (see paragraph immediately following listing of standards), all these standards are ''appropriate,'' within the meaning of 29 CFR 1910.7(c).

ANSI C12.1 Code for Electricity Meters
ANSI/IEEE C57.13 Terminology and Test Code for Instrument Transformers
ANSI/UL 5 Surface Metal Raceways and Fittings
ANSI/UL 22 Electric Amusement Machines
UL 45 Portable Electric Tools
ANSI/UL 50 Enclosures for Electrical Equipment
ANSI/UL 65 Electric Wired Cabinets
ANSI/UL 73 Electric Motor-Operated Appliances
ANSI/UL 122 Electric Photographic Equipment
ANSI/UL 130 Electric Heating Pads
ANSI/UL 153 Portable Electric Lamps
ANSI/UL 187 X-Ray Equipment
ANSI/UL 197 Commercial Electric Cooking Appliances
ANSI/UL 201 Garage Equipment
ANSI/UL 231 Electrical Power Outlets
UL 416 Refrigerated Medical Equipment
ANSI/UL 469 Musical Instruments and Accessories
ANSI/UL 471 Commercial Refrigerators and Freezers
ANSI/UL 482 Portable Sun/Heat Lamps
ANSI/UL 484 Room Air Conditioners
ANSI/UL 499 Electric Heating Appliances
UL 506 Specialty Transformers
ANSI/UL 507 Electric Fans
ANSI/UL 508 Electric Industrial Control Equipment
ANSI/UL 514A Metallic Outlet Boxes, Electrical
UL 544 Electric Medical and Dental Equipment
UL 664 Commercial Dry-Cleaning Machines (Type IV)

ANSI/UL 676 Underwater Lighting Fixtures
ANSI/UL 698 Industrial Control Equipment for Use in Hazardous (Classified) Locations
ANSI/UL 705 Power Ventilators
UL 745–1 Portable Electric Tools
UL 745–2–1 Particular Requirements of Drills
UL 745–2–2 Particular Requirements for Screwdrivers and Impact Wrenches
UL 745–2–3 Particular Requirements for Grinders, Polishers, and Disk-Type Sanders
UL 745–2–4 Particular Requirements for Sanders
UL 745–2–5 Particular Requirements for Circular Saws and Circular Knives
UL 745–2–6 Particular Requirements for Hammers
UL 745–2–8 Particular Requirements for Shears and Nibblers
UL 745–2–9 Particular Requirements for Tappers
UL 745–2–11 Particular Requirements for Reciprocating Saws
UL 745–2–12 Particular Requirements for Concrete Vibrators
UL 745–2–14 Particular Requirements for Planers
UL 745–2–17 Particular Requirements for Routers and Trimmers
UL 745–2–30 Particular Requirements for Staplers
UL 745–2–31 Particular Requirements for Diamond Core Drills
UL 745–2–32 Particular Requirements for Magnetic Drill Presses
UL 745–2–33 Particular Requirements for Portable Bandsaws
UL 745–2–34 Particular Requirements for Strapping Tools
UL 745–2–35 Particular Requirements for Drain Cleaners
UL 745–2–36 Particular Requirements for Hand Motor Tools
UL 745–2–37 Particular Requirements for Plate Jointers
ANSI/UL 751 Vending Machines
UL 763 Motor-Operated commercial Food Preparing Machines
UL 775 Graphic Arts Equipment
ANSI/UL 813 Commercial Audio Equipment
ANSI/UL 859 Personal Grooming Appliances
UL 869A Standard for Service Equipment
ANSI/UL 886* Outlet Boxes and Fittings for Use in Hazardous (Classified) Locations
ANSI/UL 913 Intrinsically Safe Apparatus and Associated apparatus for Use in Class I, II, and III, Division 1, Hazardous Locations
ANSI/UL 923 Microwave Cooking Appliances
UL 935 Fluorescent-Lamp Ballasts
ANSI/UL 982 Motor-Operated Household Food Preparing Machines
ANSI/UL 1012 Power Supplies
ANSI/UL 1017 Vacuum Cleaning Machines and Blower Cleaners
ANSI/UL 1018 Electric Aquarium Equipment
UL 1026 Electric Household Cooking and Food Serving Appliances
UL 1028 Hair Clipping and Shaving Appliances
ANSI/UL 1042 Electric Baseboard Heating Equipment
ANSI/UL 1054 Special-Use Switches
ANSI/UL 1069 Hospital Signaling and Nurse-Call System
UL 1083 Household Electric Skillets and Frying-Type Appliances
ANSI/UL 1203* Explosion-Proof and Dust-Ignition-Proof Electrical Equipment for Use in Hazardous (Classified) Locations
UL 1236 Battery Chargers for Charging Engine-Starter Batteries
UL 1244 Electrical and Electronic Measuring and Testing Equipment
UL 1248 Engine-Generator Assemblies for Use in Recreational Vehicles
ANSI/UL 1262 Laboratory Equipment
ANSI/UL 1270 Radio Receivers, Audio Systems, and Accessories
ANSI/UL 1310 Direct Plug-In Transformer Units
ANSI/UL 1409 Low-Voltage Video Products Without Cathode-Ray-Tube Displays
ANSI/UL 1410 Television Receivers and High-Voltage Video Products
ANSI/UL 1411 Transformers and Motor Transformers for Use in Audio-, Radio-, and Television-Type Appliances
UL 1431 Personal Hygiene and Health Care Appliances
UL 1449 Transient Voltage Surge Suppressors
UL 1459 Telephone Equipment
UL 1492 Audio-Video Products and Accessories
ANSI/UL 1570 Fluorescent Lighting Fixtures
ANSI/UL 1571 Incandescent Lighting Fixtures
UL 1598 Luminaries
ANSI/UL 1573 Stage and Studio Lighting Units
UL 1585 Class 2 and Class 3 Transformers
UL 1604 Electrical Equipment for Use In Class I and II, Division 2, and Class III Hazardous (Classified) Locations
ANSI/UL 1638 Visual Signaling Appliances—Private Mode Emergency and General Utility Signaling
ANSI/UL 1647 Motor-Operated Massage and Exercise Machines
UL 1778 Uninterruptible Power Supply Equipment
UL 1786 Nightlights
UL 1950 Safety of Information Technology Equipment, Including Electrical Business Equipment
UL 1993 Self-Ballasted Lamps and Lamp Adapters
UL 1995 Heating and Cooling Equipment
UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111 Electrical Measuring and Test Equipment; Part 1: General Requirements
UL 6500 Audio/Visual and Musical Instrument Apparatus for Household, Commercial, and Similar General Use

*Testing and certification of products under this test standard is limited to Class I locations. Explosion testing is also limited to current test chamber capabilities.

At the time of preparation of this preliminary notice, some of the test standards for which OSHA currently recognizes MET, and which are listed above, have been withdrawn or replaced by the standards developing organization. Under OSHA policy regarding such withdrawn or replaced test standards, OSHA can no longer recognize the NRTL for the test standards, but the NRTL may request recognition for comparable test standards, i.e., other appropriate test standards covering similar types of product testing. However, a number of other NRTLs also are recognized for these withdrawn or replaced standards. As a result, OSHA will publish a separate notice to make the appropriate substitutions for MET and the other NRTLs that were recognized for these standards.

OSHA's recognition of MET, or any NRTL, for a particular test standard is limited to equipment or materials (i.e., products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, an NRTL's scope of recognition excludes any product(s) falling within the scope of a test standard for which OSHA has no NRTL testing and certification requirements.

Many of the Underwriters Laboratories Inc. (UL) test standards listed above also are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience in compiling the list, we use the designation of the standards developing organization (e.g., UL 1012) for the standard, as opposed to the ANSI designation (e.g., ANSI/UL 1012). Under our procedures, an NRTL recognized for an ANSI-approved test standard may

use either the latest proprietary version of the test standard or the latest ANSI version of that standard, regardless of whether it is currently recognized for the proprietary or ANSI version. Contact ANSI or the ANSI Web site (*http://www.ansi.org*) and click ''NSSN'' to find out whether or not a test standard is currently ANSI-approved.

Programs and Procedures

The renewal would include MET's continued use of the following supplemental programs and procedures, based upon the criteria detailed in the March 9, 1995 **Federal Register** notice (60 FR 12980, 3/9/95). This notice lists nine (9) programs and procedures (collectively, programs), eight of which an NRTL may use to control and audit, but not actually to generate, the data relied upon for product certification. An NRTL's initial recognition will always include the first or basic program, which requires that all product testing and evaluation be performed in-house by the NRTL that will certify the product. OSHA has already recognized MET for these programs. See *http://www.osha-slc.gov/dts/otpca/nrtl/met.html.*

Program 2: Acceptance of testing data from independent organizations, other than NRTLs.

Program 3: Acceptance of product evaluations from independent organizations, other than NRTLs.

Program 4: Acceptance of witnessed testing data.

Program 5: Acceptance of testing data from non-independent organizations.

Program 6: Acceptance of evaluation data from non-independent organizations (requiring NRTL review prior to marketing).

Program 7: Acceptance of continued certification following minor modifications by the client.

Program 8: Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC-CB) Scheme.

Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents.

OSHA developed these programs to limit how an NRTL may perform certain aspects of its work and to permit the activities covered under a program only when the NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, these programs help to define the scope of that recognition.

Expansion of Recognition

MET seeks recognition for testing and certification of products for demonstration of conformance to the following two test standards, and OSHA has determined that the standards are ''appropriate'' within the meaning of 29 CFR 1910.7(c).

UL 924 Emergency Lighting and Power Equipment

UL 1008 Transfer Switch

The NRTL Program staff did not perform an on-site review in connection with the expansion request but reviewed information pertinent to this request and provided a positive recommendation on the expansion (see Exhibit 29–1).

Preliminary Finding

MET has submitted acceptable requests for renewal and expansion of its recognition as an NRTL. Following a review of the application files, and other pertinent information, the NRTL Program staff has concluded that OSHA can grant to MET: (1) the renewal for the one site and the test standards and programs listed above, and (2) the expansion for the additional two test standards, also listed above. The staff therefore recommended to the Assistant Secretary that the applications be preliminarily approved.

Based upon the recommendation of the staff, the Assistant Secretary has made a preliminary finding that MET Laboratories, Inc., can meet the requirements as prescribed by 29 CFR 1910.7 for the renewal and expansion of its recognition.

OSHA welcomes public comments, in sufficient detail, as to whether MET has met the requirements of 29 CFR 1910.7 for the renewal and expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comment should consist of pertinent written documents and exhibits. To consider it, OSHA must receive the comment at the address provided above (see **ADDRESSES**), no later than the last date for comments (see **DATES** above). Should you need more time to comment, OSHA must receive your written request for extension at the address provided above (also see **ADDRESSES**) no later than the last date for comments (also see **DATES** above). You must include your reason(s) for any request for extension. OSHA will limit an extension to 30 days, unless the requester justifies a longer period. We may deny a request for extension if it is frivolous or otherwise unwarranted. You may obtain or review copies of MET's requests, the on-site review report, other exhibits, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. You should refer to Docket No. NRTL1–88, the permanent record of public information on MET's recognition.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend whether to grant MET's renewal and expansion requests. The Assistant Secretary will make the final decision on granting the renewal and expansion and, in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, DC, this 3rd day of April, 2002.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 02–8768 Filed 4–10–02; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–454, STN 50–455, STN 50–456 and STN 50–457]

Exelon Generation Company, LLC; Byron Station, Unit Nos. 1 AND 2, Braudwood Station, Unit Nos. 1 AND 2; Environmental Assessment and Finding of No Significant Impact; Related to a Proposed License Amendment to Revise Fuel Centerline Temperature Satety Limit

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment for Facility Operating License Nos. NPF–37, NPF–66, NPF–72, and NPF–77, issued to Exelon Generation Company, LLC, (Exelon or the licensee), for operation of the Byron Station, Unit Nos. 1 and 2, located in Ogle County, Illinois and Braidwood Station, Unit Nos. 1 and 2, located in Will County, Illinois. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of Proposed Action

The proposed action would revise the reactor core safety limit for peak fuel centerline temperature from less than or equal to 4700 °F to the design-basis fuel centerline melt temperature of less than 5080 °F, for unirradiated fuel, decreasing by 58 °F per 10,000 Megawatt-Days per Metric Tonne

Uranium (MWD/MTU) burnup. The increase in the fuel centerline temperature limit is to accommodate higher burnup of these fuel rods to exceed the licensing basis commitment rod-average burnup limit. The licensee requested that the licensing basis commitment limiting the fuel rod-average burnup to 60,000 MWD/MTU be revised to increase the rod-average burnup limit for only high burnup lead test assemblies (LTAs) to 69,000 MWD/MTU for Byron, Unit 2 Cycle 10, and 75,000 MWD/MTU for both stations for future campaigns. The burnup limits are not part of the technical specifications, but are limited by the fuel centerline temperature.

The proposed action is in accordance with the licensee's application dated September 21, 2001, as supplemented by letter dated January 31, 2002, requesting NRC to provide an amendment to the technical specification (TS) for Byron Station, Units 1 and 2, and Braidwood Station, Units 1 and 2.

The Need for the Proposed Action

Two LTAs are currently in use in Byron, Unit 2, Cycle 10. These LTAs are composed of low-tin ZIRLO cladding and fuel pin spring clips, and higher density fuel pellets. Additionally, one of the LTAs was modified to include four fuel rods which have been previously burned during two cycles to 45,750 MWD/MTU. Following irradiation during a third cycle, the four rods will have a projected burnup of approximately 69,000 MWD/MTU. Irradiation of these four fuel rods to a higher burnup will provide data on fuel and materials performance that will support industry goals of extending the current fuel burnup limits and will provide data to address NRC questions related to fuel performance behavior at high burnups. The data will also help confirm the applicability of nuclear design and fuel performance models at high burnups.

The proposed irradiation of this fuel assembly does not require a change to the TS. However, the planned additional cycle of operation for the high burnup fuel rods will result in burnup levels exceeding the rod-average burnup limit of 60,000 MWD/MTU for that LTA (which is the design limit for the use of Zircaloy or ZIRLO clad fuel in Byron and Braidwood approved in amendments 78 and 70 respectively).

Environmental Impacts of the Proposed Action

Background

In its previous environmental assessments concerning fuel burnup, the Commission relied on the results of a study conducted by the NRC by Pacific Northwest National Laboratories (PNNL). The results of the study were documented in detail in the report, ''Assessment of the Use of Extended Burnup Fuels in Light Water Power Reactors'' (NUREG/CR–5009, PNL–6258, February 1988). The overall findings of this study showed there were no significant adverse effects generated by increasing the batch-average burnup level of 33,000 MWD/MTU to 50,000 MWD/MTU or above as long as the maximum rod average burnup level of any fuel rod was no greater than 60,000 MWD/MTU. Furthermore, based on the above study and the report, ''The Environmental Consequences of Higher Fuel Burn-up,'' (AIF/NESP–032), issued by the Atomic Industrial Forum, the NRC staff concluded that the environmental impacts summarized in Table S–3 of 10 CFR 51.51 and in Table S–4 of 10 CFR 51.52 for a burnup level of 33,000 MWD/MTU are conservative and bound the corresponding impacts for burnup levels up to 60,000 MWD/MTU and uranium-235 enrichments up to 5 percent by weight. [1]

In this environmental assessment regarding the impacts of the use of extended burnup fuel beyond 60,000 MWD/MTU, the Commission is relying on the results of another study conducted for it by PNNL entitled, ''Environmental Effects of Extending Fuel Burnup Above 60 GWd/MTU,'' (NUREG/CR–6703, PNL–13257, January 2001). This report represents an update to NUREG/CR–5009. Although the study evaluated the environmental impacts of high burnup fuel up to 75,000 MWD/MTU, certain aspects of the review were limited to evaluating the impacts of extended burnup up to 62,000 MWD/MTU because of data available to support these findings. During the study, all aspects of the fuel-cycle were considered, from mining, milling, conversion, enrichment and fabrication through normal reactor operation, transportation, waste management, and storage of spent fuel.

Environmental Impacts

The NRC has completed its evaluation of the proposed action and concludes that there are no significant environmental impacts associated with irradiation of the four fuel rods in assembly M09E to a burnup of 69,000 MWD/MTU. The following is a summary of the staff's evaluation:

The extended burnup rods in the LTA will have a different radionuclide mix than the rest of the core. The activities of short-lived fission products will tend to remain constant or decrease slightly, while activities associated with activation products and actinides tend to increase with increasing burnup. As discussed in Attachment D to the September 21, 2001, amendment request, although there are variations in core inventories of isotopes due to extended burnup, there are no significant increases of isotopes that are major contributors to accident doses. In addition, the four fuel rods in the LTA will only contribute a very small variation in the isotopic population of the core. Thus, with extended burnup of the LTA, no significant increase in the release of radionuclides to the environment is expected during normal operation. In addition, no change is being requested by Exelon in the licensed technical specifications pertaining to allowed cooling-water activity concentrations. If leakage of radionuclides from the extended burnup LTA occurs during operation, then the radioactive material is expected to be removed by the plant cooling water cleanup system.

As discussed in Attachment D to the September 21, 2001, amendment request, the proposed changes will not result in changes in the operation or configuration of the facility. There will be no change in the level of controls or methodology used for processing radioactive effluents or handling solid radioactive waste, nor will the proposal result in any change in the normal radiation levels within the plant. Accordingly, the impacts on workers and the general population would not be significant because of the small radiological effect of the four extended burnup rods in the LTA.

Environmental Impacts of Potential Accidents

Accidents that involve the damage or melting of the fuel in the reactor core and spent-fuel handling accidents were also evaluated in NUREG/CR–6703. The accidents considered were a loss-of-coolant accident (LOCA), a steam generator tube rupture, and a fuel-handling accident.

For LOCAs, an appreciable amount or all of the fuel melts and a portion of the fission products and aerosols are released from the containment system

[1] See ''Exended Burnup Fuel Use in Commercial LWRs; Environmental Assessment and Finding of No Significant Impact,'' 53 FR 6040, February 29, 1988.

into the biosphere. The increase in the consequences of a postulated LOCA are not appreciable because of the small number of rods exceeding 60,000 MWD/MTU.

The pressurized-water reactor (PWR) steam generator tube rupture accident involves direct release of radioactive material from the contaminated reactor coolant to the environment. As discussed previously, no change is being requested by Exelon in the licensed technical specifications pertaining to allowed cooling-water activity concentrations. The maximum coolant activity is regulated through technical specifications that are independent of fuel burnup. This accident scenario has been addressed acceptably by the licensee, and the consequences have been determined to comply with the Commission's regulations.

The scenario used in evaluating potential fuel-handling accidents involves a direct release of gap activity to the environment. The gap activity of concern is based on guidance in Regulatory Guide 1.183, ''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors,'' and NUREG–1465, ''Accident Source Terms for Light-Water Nuclear Power Plants,'' and consists primarily of the noble gases, iodines, and cesiums. The only isotopes that contribute significant fractions of the committed effective dose equivalent and thyroid doses are ^{131}I and ^{134}Cs. Similarly, the only isotopes that contribute significant fractions of the deep dose are ^{132}I and ^{133}Xe. Even though the iodine inventory decreases with increasing burnup, the potential doses from fuel-handling accidents increase with fuel burnup because of increased gap-release fraction. However, because of the small number of rods exceeding 60,000 MWD/MTU, the staff concludes that the dose resulting from a fuel-handling accident involving the LTA would remain below regulatory limits.

Environmental Impacts of Transportation

The environmental effects of incident-free spent fuel transportation were also evaluated in NUREG/CR–6703. Incident-free transportation refers to transportation activities in which the shipments of radioactive material reach their destination without releasing any radioactive cargo to the environment. The vast majority of radioactive shipments are expected to reach their destination without experiencing an accident or incident, or releasing any cargo. The incident-free impacts from these normal, routine shipments arise from the low levels of radiation that are emitted externally from the shipping container. Although Federal regulations in 10 CFR Part 71 and 49 CFR Part 173 impose constraints on radioactive material shipments, some radiation penetrates the shipping container and exposes nearby persons to low levels of radiation. Based on the realistic analysis presented in NUREG/CR–6703, the staff concludes that doses associated with incident-free transportation of spent fuel with burnup to 75,000 MWD/MTU are bounded by the doses given in 10 CFR 51.52, Table S–4, for all regions of the country if dose rates from the shipping casks are maintained within regulatory limits.

Additionally, the environmental effects of spent fuel transportation accidents were also evaluated in NUREG/CR–6703. Accident risks are the product of the likelihood of an accident involving a spent-fuel shipment and the consequences of a release of radioactive material resulting from the accident. The consequences of such a transportation accident are represented by the population dose from a release of radioactive material, given that an accident occurs that leads to a breach in the shipping cask's containment systems. The consequences are a function of the total amount of radioactive material in the shipment, the fraction that escapes from the shipping cask, the transport of radioactive material to humans, and the characteristics of the exposed population. Considering the uncertainties in the data and computational methods, the overall changes in transportation accident risks due to increasing fuel burnup of the four fuel rods in the LTA are not significant. Because of the small number of rods exceeding 60,000 MWD/MTU in the LTA, the doses resulting from a spent fuel transportation accident will remain below regulatory limits, and no significant increase in the environmental effects of spent-fuel transportation accidents are expected.

Non-Radiological Impacts

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect 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.

Summary

Based on the staff's independent assessment discussed above, the NRC concludes that there are no significant adverse environmental impacts associated with the increase to the fuel centerline temperature limit and the irradiation of the four fuel rods to a burnup of 69,000 MWD/MTU.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar. However, it would deny to the licensee and the NRC operational data on the performance of fuel at extended burnup conditions.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the Byron Station, Unit Nos. 1 and 2 (dated April 30, 1982), and Braidwood Station, Unit Nos. 1 and 2 (dated June 30, 1984).

Agencies and Persons Consulted

On March 20, 2002, the staff consulted with the Illinois State official, Mr. Joe Brittin, of the Illinois Department of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the foregoing environmental assessment, the NRC staff concludes that permitting a change to the fuel centerline temperature, which would, in turn, permit irradiation of the four fuel rods to a burnup of 69,000 MWD/MTU, 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 21, 2001, as supplemented by letter dated January 31, 2002. Documents may be examined, and/or copied for a fee, at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component of NRC's Web site, *http://www.nrc.gov* (the Public Electronic Reading Room). If you do not have access to ADAMS or if there are problems in accessing the

documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1 (800) 397–4209, or (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 5th day of April, 2002.

For the Nuclear Regulatory Commission.

Anthony J. Mendiola,

Chief, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–8792 Filed 4–10–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Change in Proficiency Testing Standard for Processors of Personal Dosimeters

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of change of proficiency testing standard.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) and the National Institute of Standards and Technology (NIST), U.S. Department of Commerce, began a joint effort in 1981, through an Interagency Agreement, to provide an accreditation program for processors of personnel dosimeters. That accreditation program, which is part of the Technology Administration of the U.S. Department of Commerce, is known as the National Voluntary Laboratory Accreditation Program (NVLAP) for Ionizing Radiation Dosimetry and is referred to as NIST/NVLAP. The purpose of this notice is to: (1) Acknowledge publication of a revised proficiency testing standard for personnel dosimetry performance by NIST/NVLAP; (2) inform the public and dosimetry processors of this action; and (3) identify significant changes in the standard.

EFFECTIVE DATE: April 11, 2002.

FOR FURTHER INFORMATION, CONTACT: Betty Ann Torres, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–0191, e-mail: *BAT@nrc.gov,* or Carroll S. Brickenkamp, National Institute of Standards and Technology, Department of Commerce, NVLAP, Building 820, Room 286, Gaithersburg, MD 20899, telephone 301–975–4291, e-mail: *cbrickenkamp@nist.gov.*

SUPPLEMENTARY INFORMATION: NRC's regulations (10 CFR 20.1501) require that personnel dosimeters that need to be processed to determine dose must be processed and evaluated by a dosimetry processor that holds current personnel dosimetry accreditation from the NIST/NVLAP. Proficiency testing, currently required as part of the NIST/NVLAP accreditation process for Ionizing Radiation Dosimetry, is based on the standard issued by the American National Standard Institute (ANSI) and the Health Physics Society (HPS) for personnel dosimetry performance, ANSI/HPS N13.11–1993, as modified by NVLAP Bulletin Volume II, No. 1, ''DOSIMETRY'' (January, 1995). The bulletin modifies dose equivalent conversion factors (C_k) found in Tables 2, 3, and C3 of ANSI/HPS N13.11–1993.

A revision of ANSI/HPS N13.11–1993 was approved by the American National Standards Institute, Inc. in July 2001, and published as ANSI/HPS N13.11–2001 in October 2001. A copy of the revised standard is available for a fee from the Health Physics Society at the following internet address: *http://www.hps.org.*

The revision: (1) Adopts the conversion coefficients for photons issued by NVLAP Bulletin Volume II, No. 1, ''DOSIMETRY'' (January, 1995); (2) reduces the number of test categories, based on radiation type and energy spectrum, from nine to six; (3) increases the number of possible radiation sources for test categories to which dosimeters can be exposed during testing; (4) lowers the permitted tolerance for all non-accident categories; (5) adds an angle test to the photon category; and (6) limits the number of individual dosimeters tested that is permitted to exceed the tolerance level for non-accident, non-neutron categories.

NVLAP has determined that the revised standard, ANSI/HPS N13.11–2001, will be implemented in the accreditation process as published. Contact Carroll Brickenkamp of NIST/NVLAP for information regarding the implementation of the revised standard, ANSI/HPS N13.11–2001.

Dated at Rockville, Maryland, this 4th day of April, 2002.

For the Nuclear Regulatory Commission.

Donald A. Cool,

Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–8793 Filed 4–10–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Extension: Rule 17Ac3–1(a) and Form TA–W; SEC File No. 270–96; OMB Control No. 3235–0151.

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Subsection (c)(3)(C) of Section 17A of the Securities Exchange Act of 1934 (''Exchange Act'') authorizes transfer agents registered with an appropriate regulatory agency (''ARA'') to withdraw from registration by filing with the ARA a written notice of withdrawal and by agreeing to such terms and conditions as the ARA deems necessary or appropriate in the public interest, for the protection of investors, or in the furtherance of the purposes of Section 17A.

In order to implement Section 17A(c)(3)(C) of the Exchange Act the Commission, on September 1, 1977, promulgated Rule 17Ac3–1(a) and accompanying Form TA–W. Rule 17Ac3–1(a) provides that notice of withdrawal from registration as a transfer agent with the Commission shall be filed on Form TA–W. Form TA–W requires the withdrawing transfer agent to provide the Commission with certain information, including (1) the locations where transfer agent activities are or were performed; (2) the reasons for ceasing the performance of such activities; (3) disclosure of unsatisfied judgments or liens; and (4) information regarding successor transfer agents.

The Commission uses the information disclosed on Form TA–W to determine whether the registered transfer agent applying for withdrawal from registration as a transfer agent should be allowed to deregister and, if so, whether the Commission should attach to the granting of the application any terms or conditions necessary or appropriate in the public interest, for the protection of investors, or in furtherance of the purposes of Section 17A of the Exchange Act. Without Rule 17Ac3–1(a) and Form TA–W, transfer agents

registered with the Commission would not have a means for voluntary deregistration when necessary or appropriate to do so.

Respondents file approximately fifty Form TA–Ws with the Commission annually. The filing of a Form TA–W occurs only once, when a transfer agent is seeking deregistration. In view of the ready availability of the information requested by Form TA–W, its short and simple presentation, and the Commission's experience with the Form, we estimate that approximately one half hour is required to complete Form TA–W, including clerical time. Thus, the total burden of twenty-five hours of preparation for all transfer agents seeking deregistration in any one year is negligible.

The Commission estimates a cost of approximately $35 for each half hour required to complete a Form TA–W. Therefore, based upon a total of twenty-five hours, transfer agents spend approximately $1,750 each year to complete fifty Form TA–Ws.

Written 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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: April 4, 2002.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–8804 Filed 4–10–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27514]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

April 5, 2002.

Notice is hereby given that the following filing has been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application-declaration for complete statements of the proposed transaction summarized below. The application-declaration and any amendments are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application-declaration should submit their views in writing by April 30, 2002, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 30, 2002, the application-declaration, as filed or as amended, may be granted and/or permitted to become effective.

KeySpan Corporation and Eastern Enterprises (70–9995)

KeySpan Corporation (''KeySpan''), One MetroTech Center, Brooklyn New York, 11201, a public utility holding company registered under the Act, and Eastern Enterprises (''Eastern''), One Beacon Street, Boston, Massachusetts 02108, a wholly-owned subsidiary of KeySpan and an exempt holding company [1] (collectively, ''Applicants''), have filed an application-declaration under sections 6(a), 7, 9(a) and 10 of the Act and rules 43 and 54 under the Act.

In an order issued on November 7, 2000 (Holding Co. Act Release No. 27271), as supplemented by the order issued on December 1, 2000 (Holding Co. Act Release No. 27287) (collectively, the ''Merger Order''), the Commission approved KeySpan's acquisition of Eastern. In addition, on November 8, 2000, the Commission issued an order (Holding Co. Act Release No. 27272), as supplemented by an order issued on December 1, 2000 (Holding Co. Act Release No. 27286) (collectively, the ''Financing Order''), authorizing a program of external financings, credit support arrangements and related proposals for KeySpan and its subsidiaries.

Eastern's direct, wholly-owned public utility subsidiaries are: Boston Gas Company (d/b/a KeySpan Energy Delivery New England) (''Boston Gas''), Essex Gas Company (d/b/a KeySpan Energy Delivery New England) (''Essex Gas''), Colonial Gas Company (d/b/a KeySpan Energy Delivery New England) (''Colonial Gas''), and EnergyNorth Natural Gas, Inc. (d/b/a KeySpan Energy Delivery New England) (''ENGI'').[2] Eastern also engages in various nonutility activities described in the Merger Order.

In the current filing, Applicants request authority for Eastern to change its organizational form from a Massachusetts business trust to a Massachusetts limited liability company to be named KeySpan New England, LLC (''KeySpan New England'') (the ''Transaction'') by undertaking the following actions. First, KeySpan New England will be formed as a Massachusetts limited liability company, and KSNE, LLC (''KSNE'') will be formed as a Delaware limited liability company. Second, KeySpan will obtain ninety-nine percent (99%) of the membership interests in KeySpan New England for ninety-nine dollars and one hundred percent (100%) of the membership interests in KSNE for one hundred dollars; KSNE will obtain the remaining one percent (1%) membership interest in KeySpan New England for one dollar. As a result, KeySpan New England will be a two-member Massachusetts limited liability company owned 99% by KeySpan and 1% by KSNE, and KSNE will be a single-member Delaware limited liability company owned 100% by KeySpan. Third, Eastern and KeySpan New England will execute an agreement and plan of merger under which Eastern will agree to merge with and into KeySpan New England (the ''Merger''), with KeySpan New England as the surviving entity. The Merger will be

[1] *See Eastern Enterprises,* Holding Co. Act Release No. 27269 (Nov. 7, 2000).

[2] Boston Gas distributes natural gas to customers located in Boston and other cities and towns in eastern and central Massachusetts; Essex Gas distributes natural gas to customers in eastern Massachusetts; Colonial Gas distributes natural gas to customers located in northeastern Massachusetts and on Cape Cod; and ENGI distributes natural gas to customers located in southern and central New Hampshire and the city of Berlin.

effective upon the acceptance of a Certificate of Merger by the Secretary of the Commonwealth of Massachusetts.

KeySpan New England will succeed to Eastern's ownership interests in the gas utilities and the nonutility subsidiaries owned by Eastern. KeySpan New England will also be the successor of Eastern with respect to its commitments and authorizations set forth in the Merger Order and Financing Order. In addition, Applicants request that the Commission approve KeySpan New England, as the successor of Eastern, as an exempt holding company under the Act after the Transaction is completed.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–8807 Filed 4–10–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25510; File No. 812–12624]

Notice of Application

April 5, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order pursuant to Section 26(c) of the Investment Company Act of 1940 (the ''1940 Act'') approving certain substitutions of securities.

Applicants: Merrill Lynch Life Insurance Company (''MLLIC''), Merrill Lynch Variable Life Separate Account (''Separate Account 1''), Merrill Lynch Life Variable Life Separate Account II (''Separate Account 2''), Merrill Lynch Life Variable Annuity Separate Account (''Separate Account 3''), Merrill Lynch Life Variable Annuity Separate Account A (''Separate Account 4''), ML Life Insurance Company of New York (''MLNY''), ML of New York Variable Life Separate Account (''Separate Account 5''), ML of New York Variable Life Separate Account II (''Separate Account 6''), ML of New York Variable Annuity Separate Account (''Separate Account 7''), and ML of New York Variable Annuity Separate Account A (''Separate Account 8'') (except for MLLIC and MLNY, each a ''Separate Account''; Separate Accounts 1 through 8 collectively referred to herein as the ''Separate Accounts'') (all foregoing parties collectively referred to herein as the ''Applicants'').

Summary of Application: The Applicants request an order pursuant to Section 26(c) of the 1940 Act to permit the substitution of shares of the Large Cap Core Focus Fund and Core Bond Focus Fund of the Merrill Lynch Variable Series Funds, Inc. and the Core Bond Strategy Portfolio of the Merrill Lynch Series Fund, Inc. (collectively, the ''Replacement Portfolios'') for shares of the Natural Resources Focus Fund and Global Bond Focus Fund of the Merrill Lynch Variable Series Funds, Inc. (collectively, the ''Substituted Portfolios'') currently held by the Separate Accounts.

Filing Date: The application was filed on August 31, 2001, and amended and restated on January 25, 2002, April 3, 2002 and April 5, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested person may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 29, 2002, and 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 may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Edward W. Diffin, Jr., Esq., Merrill Lynch Insurance Group, 7 Roszel Road, Princeton, New Jersey 08540–6205 and Stephen E. Roth, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Ave., NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, or William J. Kotapish, Assistant Director, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW., Washington, DC 20549–0102 [tel. (202) 942–8090].

Applicants' Representations

1. MLLIC is a stock life insurance company that is domiciled in Arkansas. Its operations include both life insurance and annuity products. As of December 31, 2001, MLLIC had assets of approximately $15.5 billion. MLLIC is authorized to operate as a life insurance company in forty-nine states, the District of Columbia, the U.S. Virgin Islands, Guam and Puerto Rico. MLLIC was originally incorporated under the laws of the State of Washington, on January 27, 1986, and redomesticated to the State of Arkansas on August 31, 1991. MLLIC is a wholly-owned subsidiary of Merrill Lynch Insurance Group, Inc. MLLIC is an indirect wholly-owned subsidiary of Merrill Lynch & Co., Inc. MLLIC is the depositor and sponsor of Separate Accounts 1–4.

2. Separate Account 1 is a separate investment account of MLLIC and is registered under the 1940 Act as a unit investment trust. Separate Account 1 serves as a funding vehicle for certain variable life insurance contracts issued by MLLIC (collectively, ''Second Generation MLLIC VLI Contracts''). Separate Account 1 is a ''separate account'' as defined in Section 2(a)(37) of the 1940 Act.

3. Separate Account 2 is a separate investment account of MLLIC and is registered under the 1940 Act as a unit investment trust. Separate Account 2 serves as a funding vehicle for certain variable life insurance contracts issued by MLLIC (collectively, ''First Generation MLLIC VLI Contracts''). Separate Account 2 is a ''separate account'' as defined in Section 2(a)(37) of the 1940 Act.

4. Separate Account 3 is a separate investment account of MLLIC and is registered under the 1940 Act as a unit investment trust. Separate Account 3 serves as a funding vehicle for certain variable annuity insurance contracts issued by MLLIC (''MLLIC Portfolio Plus Contracts''). Separate Account 3 is a ''separate account'' as defined in Section 2(a)(37) of the 1940 Act.

5. Separate Account 4 is a separate investment account of MLLIC and is registered under the 1940 Act as a unit investment trust. Separate Account 4 serves as a funding vehicle for certain variable annuity insurance contracts issued by MLLIC (collectively, ''MLLIC Retirement Plus Contracts''). Separate Account 4 is a ''separate account'' as defined in Section 2(a)(37) of the 1940 Act.

6. MLNY is a stock life insurance company that is organized under the laws of the State of New York. MLNY is an indirect wholly owned subsidiary of Merrill Lynch & Co., Inc. MLNY is authorized to sell life insurance and annuities in nine states, and had approximately $1.3 billion of assets under management as of December 31,

2001. MLNY is the depositor and sponsor of Separate Accounts 5–8.

7. Separate Account 5 is a separate investment account of MLNY and is registered under the 1940 Act as a unit investment trust. Separate Account 5 serves as a funding vehicle for certain variable life contracts issued by MLNY (''First Generation MLNY VLI Contracts''). Separate Account 5 is a ''separate account'' as defined in Section 2(a)(37) of the 1940 Act.

8. Separate Account 6 is a separate investment account of MLNY and is registered under the 1940 Act as a unit investment trust. Separate Account 6 serves as a funding vehicle for certain variable life contracts issued by MLNY (''Second Generation MLNY VLI Contracts''). Separate Account 6 is a ''separate account'' as defined in Section 2(a)(37) of the 1940 Act.

9. Separate Account 7 is a separate investment account of MLNY and is registered under the 1940 Act as a unit investment trust. Separate Account 7 serves as a funding vehicle for certain variable annuity contracts issued by MLNY (''MLNY Portfolio Plus Contracts''). Separate Account 7 is a ''separate account'' as defined in Section 2(a)(37) of the 1940 Act.

10. Separate Account 8 is a separate investment account of MLNY and is registered under the 1940 Act as a unit investment trust. Separate Account 8 serves as a funding vehicle for certain variable annuity contracts issued by MLNY (''MLNY Retirement Plus Contracts'') (together with the Second Generation MLLIC VLI Contracts, First Generation MLLIC VLI Contracts, MLLIC Portfolio Plus Contracts, MLLIC Retirement Plus Contracts, First Generation MLNY VLI Contracts, Second Generation MLNY VLI Contracts and MLNY Portfolio Plus Contracts, the ''Variable Contracts''). Separate Account 8 is a ''separate account'' as defined in Section 2(a)(37) of the 1940 Act.

11. Merrill Lynch, Pierce, Fenner & Smith, Incorporated (''MLPF&S'') serves as principal underwriter and distributor for the Variable Contracts. MLPF&S was organized in 1958 under the laws of the State of Delaware and is registered as a broker-dealer under the Securities Exchange Act of 1934. It is a member of the National Association of Securities Dealers, Inc. MLPF&S may enter into selling agreements with other broker-dealers registered under the Securities Exchange Act of 1934 whose representatives are authorized by applicable law to sell the Variable Contracts.

12. Merrill Lynch Series Fund, Inc. (''Series Fund'') is registered as an open-end management investment company under the 1940 Act (File No. 811–3091) and currently offers nine separate investment portfolios, one of which would be involved in the proposed substitutions. The Series Fund issues a separate series of shares of common stock in connection with each portfolio, and has registered such shares under the Securities Act of 1933 (''1933 Act'') on Form N–1A (File No. 2–69062). Each separate series offers only one class of shares. Merrill Lynch Investment Managers, L.P. (''MLIM'') serves as the investment manager to each portfolio. MLIM is an indirect subsidiary of Merrill Lynch & Co., Inc. MLIM receives an investment advisory fee from each portfolio it manages.

13. Merrill Lynch Variable Series Funds, Inc. (''Variable Series Funds'') is registered as an open-end management investment company under the 1940 Act (File No. 811–3290) and currently offers nineteen separate investment portfolios, four of which would be involved in the proposed substitutions. The Variable Series Funds issues a separate series of shares of common stock in connection with each portfolio, and has registered such shares under the 1933 Act on Form N–1A (File No. 2–74452). Each separate series offers two classes of shares, Class A shares and Class B shares. The sole distinction between Class A shares and Class B shares is the imposition of a distribution fee of 0.15% on Class B shares pursuant to Rule 12b-1 under the 1940 Act. Under the proposed substitutions, shareholders of the Substituted Portfolios would receive Class A shares of the Replacement Portfolio. MLIM serves as the investment manager to each portfolio, for which it receives investment advisory fees.

14. The following chart sets out the investment objectives and certain policies of each Substituted Portfolio and each Replacement Portfolio, as stated in their respective prospectuses and statements of additional information.

Substituted portfolios	Replacement portfolios
Natural Resources Focus Fund of the Variable Series Funds	**Large Cap Core Focus Fund of the Variable Series Funds**
Investment Objective: Capital appreciation and protection of purchasing power of shareholder's capital through investments primarily in equity securities of companies with substantial natural resource assets	Investment Objective: To seek high total investment return.
Investment Policies: The Fund generally invests in a portfolio consisting of domestic and foreign companies in a variety of natural resource-related sectors, such as mining, energy, chemicals, paper, steel, or agriculture. Under certain economic circumstances, the Fund may concentrate its investments in one or more of these sectors (although it will not invest more than 25% of its assets in any one industry within a sector). The Fund is non-diversified, which means that it can invest more of its assets in fewer companies than other funds	Investment Policies: The Fund tries to choose investments that will increase in value by investing primarily in a diversified portfolio of equity securities of large capitalization companies located in the United States. The Fund uses an investment approach that blends growth and value. Current income from dividends and interest are not an important consideration in selecting portfolio securities.
Global Bond Focus Fund of the Variable Series Funds	**Core Bond Focus Fund of the Variable Series Funds**
Investment Objective: To provide high total investment return	Investment Objective: Primarily to obtain a high level of current income, and secondarily, to seek capital appreciation when consistent with its primary objective.
Investment Policies:	Investment Policies:

Substituted portfolios	Replacement portfolios
The Fund invests in a global portfolio of fixed-income securities denominated in various currencies, including multinational currency units. The Fund invests in fixed-income securities that have a credit rating of A or better by Standard and Poor's or by Moody's commercial paper rated A–1 by Standard & Poor's Prime-1 by Moody's or obligations that MLIM has determined to be of similar creditworthiness	The Fund invests in fixed-income securities of any kind and maturity rated investment grade by a Nationally Recognized Statistical Rating Organization. The Fund invests most of its assets in securities issued by U.S. companies, but may also invest in securities issued by foreign companies if they are denominated in U.S. dollars. The Fund's investments emphasize current income more than growth of capital. **Core Bond Strategy Portfolio of the Series Fund** Investment Objective: Primarily to provide a high level of current income, and secondarily, to seek capital appreciation. Investment Policies: The Portfolio invests at least 65% of its assets in debt securities of any kind and maturity that have a rating within the four highest grades of Moody's or Standard & Poor's.

15. The following chart describes the fees payable for advisory and subadvisory services for the year ending December 31, 2001, expressed as an annual percentage of average daily net assets, by each Substituted Portfolio and each Replacement Portfolio.

Substituted portfolios		Replacement portfolios	
Name	Percent	Name	Percent
Natural Resources Focus Fund Annual Advisory Fees	0.65	Large Cap Core Focus Fund Annual Advisory Fees	[1] 0.45
Global Bond Focus Fund Annual Advisory Fees	0.60	Core Bond Focus Fund Annual Advisory Fees	[2] 0.43
		Core Bond Strategy Portfolio Annual Advisory Fees	[3] 0.33

[1] The Large Cap Core Focus Fund pays an annual advisory fee based on the average daily value of the Fund's net assets, as follows: 0.50% of the average daily net assets not exceeding $250 million, 0.45% of the next $50 million, 0.425% of the next $100 million, and 0.40% of the amount in excess of $400 million.

[2] The Core Bond Focus Fund pays an annual advisory fee based on the aggregate daily value of the net assets of the Fund and another fund managed by MLIM (the High Current Income Fund). The annual advisory fee, based upon the aggregate average daily value of the combined portfolios' net assets, is 0.50% of the average daily net assets not exceeding $250 million, 0.45% of the next $250 million, and 0.40% of the amount in excess of $500 million.

[3] The Core Bond Strategy Portfolio pays an annual advisory fee based upon the aggregate average daily value of the Portfolio and eight other portfolios that are managed by MLIM. The annual advisory fee, based upon the aggregate average daily value of the nine combined portfolios' net assets, is 0.50% of the average daily net assets not exceeding $250 million, 0.45% of the next $50 million, 0.40% of the next $100 million, 0.35% of the next $400 million, and 0.30% of the amount in excess of $800 million.

16. The following chart describes the total operating expenses (before and after any waivers and reimbursements) for the year ended December 31, 2001, expressed as an annual percentage of average daily net assets, of the Substituted Portfolios and the Replacement Portfolios. Neither the Substituted Portfolios nor shares of the Replacement Portfolios have adopted any plan pursuant to Rule 12b–1 under the 1940 Act.

	Substituted portfolio: natural resources focus fund	Replacement portfolio: large cap core focus fund
Management Fees	0.65%	0.45%
Other Expenses	0.33%	0.08%
Total Operating Expenses	0.98%	0.53%
Less Expense Waivers and Reimbursements	N/A	N/A
Net Operating Expenses	0.98%	0.53%

	Substituted portfolio: global bond focus fund	Replacement portfolios	
		Core bond focus fund	Core bond stragegy portfolio
Management Fees	0.60%	0.43%	0.33%
Other Expenses	0.19%	0.08%	0.11%
Total Operating Expenses	0.79%	0.51%	0.44%
Less Expense Waivers and Reimbursements	N/A	N/A	N/A
Net Operating Expenses	0.79%	0.51%	0.44%

17. Pursuant to their authority under the respective Variable Contracts and the prospectuses describing the same, and subject to the approval of the Commission under Section 26(c) of the 1940 Act, MLLIC and MLNY propose to substitute shares of the Replacement Portfolios for shares of the Substituted Portfolios in the Separate Accounts (the ''Substitutions'') as follows: Substitute shares of the Core Bond Strategy Portfolio for shares of the Global Bond Focus Fund under certain of the First Generation MLLIC VLI Contracts, the Second Generation MLLIC VLI Contracts, certain of the First Generation MLNY VLI Contracts, and the Second Generation MLNY VLI Contracts; (b) substitute shares of the Large Cap Core Focus Fund for shares of the Natural Resources Focus Fund under the MLLIC Portfolio Plus Contracts, the MMLIC Retirement Plus Contracts, the MLNY Portfolio Plus Contracts, and the MLNY Retirement Plus Contracts; and (c) substitute shares of the Core Bond Focus Fund for shares of the Global Bond Focus Fund under the MLLIC Retirement Plus Contracts and the MLNY Retirement Plus Contracts.

18. Following these transactions, each Separate Account will have two subaccounts holding shares of the Replacement Portfolios. Each Separate Account will combine the two subaccounts holding shares of each Replacement Portfolio by transferring shares on the same date from one of the subaccounts holding shares of the Replacement Portfolio to the other subaccount holding shares of the Replacement Portfolio. The net effect of the Substitutions will be to eliminate the subaccount in each Separate Account relating to the Substituted Portfolios.

19. Applicants submit that the investment objectives and policies of the Substituted Portfolios are relatively narrow, and their investment strategies may result in more volatile performance. Particularly, the Natural Resources Focus Fund's investments are concentrated in natural resource-related sectors and the Global Bond Focus Fund, a non-diversified fund, concentrates its assets in a relatively small number of investments, which increases its risk exposure. Further, the Board of Directors of the Variable Series Funds has determined to liquidate the Substituted Portfolios. After considering the limited prospects for growth in the Substituted Portfolios and their poor performance and asset growth to date, the Applicants determined that it would be both difficult to find replacement funds which mirror their investment objectives and policies, and inadvisable to do so. Rather, Applicants determined that it was in the best interests of Variable Contract owners to substitute them into portfolios currently available under the Variable Contracts that have comparable, albeit broader, investment objectives. Each Variable Contract offers either one or the other, but not both of the Replacement Portfolios for the Global Bond Focus Fund.

20. The Substitutions are necessary due to the impending liquidation of the Substituted Portfolios by the Variable Series Funds. In addition, MLLIC and MLNY believe that the elimination of these investment options will make their Variable Contracts more efficient to administer and oversee and thus, more cost-efficient and attractive to customers. The Replacement Portfolios have gathered more assets and have generally performed better than the Substituted Portfolios over time, as shown in the charts below.

SUBSTITUTED PORTFOLIOS

Year	Global Bond Focus Fund		Natural Resources Focus Fund	
	Net assets (in thousands) at December 21	Net change	Net assets (in thousands) at December 31	Net change
2001	$26,801	(22.65%)	$11,358	(30.18%)
2000	34,649	(25.32%)	16,268	11.92%
1999	46,399	(33.16%)	14,535	(6.47%)
1998	69,416	(8.79%)	15,540	(42.40%)
1997	76,107	(18.55%)	26,979	(40.31%)

SUBSTITUTED PORTFOLIOS

Average annual total return	Global bond focus fund	Natural resources focus fund
One Year	(3.20%)	(11.00%)
Five Years	0.48%	3.08%
Ten Years	.....	5.39%
Since Inception	3.22% (July 1, 1993)	4.51% (June 1, 1998)

REPLACEMENT PORTFOLIOS

Year	Large cap core focus fund		Core bond focus fund		Core bond strategy fund	
	Net assets (in thousands) at December 31	Net change	Net assets (in thousands) at December 31	Net change	Net assets (in thousands) at December 31	Net change
2001	$597,713	(21.51%)	$646,147	27.38%	$130,204	10.26%
2000	761,558	(20.53%)	507,248	(6.69%)	118,088	(1.60%)
1999	958,313	11.06%	543,578	(8.53%)	120,007	(8.90%)
1998	862,897	(1.39%)	594,301	12.61%	131,729	5.60%

REPLACEMENT PORTFOLIOS—Continued

Year	Large cap core focus fund		Core bond focus fund		Core bond strategy fund	
	Net assets (in thousands) at December 31	Net change	Net assets (in thousands) at December 31	Net change	Net assets (in thousands) at December 31	Net change
1997	875,064	10.17%	527,770	(1.97%)	124,746	5.73%

REPLACEMENT PORTFOLIOS

Average annual total return	Large cap core focus fund	Core bond focus fund	Core bond strategy portfolio
One Year	(7.39%)	6.68%	7.83%
Five Years	9.42%	6.07%	6.36%
Ten Years	10.18%	6.55%	6.94%
Since Inception	13.78% (April 29, 1982)	9.36% (April 29, 1982)	10.04% (Jan. 7, 1981)

21. MLLIC and MLNY will effect the Substitutions as soon as practicable following the issuance of the requested order as follows. As of the effective date of the Substitutions (''Effective Date''), shares of each Substituted Portfolio will be redeemed in cash by MLLIC and MLNY. The proceeds of such redemptions will then be used to purchase shares of each Replacement Portfolio by cash purchases, with each subaccount of the Separate Accounts investing the proceeds of its redemption from a Substituted Portfolio in the corresponding Replacement Portfolio.

22. All redemptions of shares of the Substituted Portfolios and purchases of shares of the Replacement Portfolios will be effected in accordance with Rule 22C–1 under the 1940 Act. The Substitutions will take place at relative net asset value with no change in the amount of any Variable Contract owner's contract value or death benefit or in the dollar value of his or her investments in any of the subaccounts. Variable Contract owners will not incur any additional fees or charges as a result of the Substitutions, nor will their rights or MLLIC's and MLNY's obligations under the Variable Contracts be altered in any way. All expenses incurred in connection with the Substitutions, including legal, accounting, transactional, and other fees and expenses, including brokerage commissions, will be paid by MLLIC and MLNY. In addition, the Substitutions will not impose any tax liability on Variable Contract owners. The Substitutions will not cause the Variable Contract fees and charges currently paid by existing Variable Contract owners to be greater after the Substitutions than before the Substitutions. Neither MLLIC nor MLNY will exercise any right it may have under the Variable Contracts to impose restrictions on transfers under the Variable Contracts for a period of at least thirty days following the Substitutions.

23. For each period (not to exceed a fiscal quarter) during the 24 months following the date of the Substitutions, MLLIC and MLNY will reimburse (on the last business day of any such period) any subaccount available through a Variable Contract and investing in a Replacement Portfolio such that the sum of the Replacement Portfolio operating expenses (taking into account expense waivers and reimbursements) together with subaccount expenses[4] for such period on an annualized basis will not exceed the following limits (which equal, for each Variable Contract, the respective Substituted Portfolio's net operating expenses, together with any subaccount expenses, for the fiscal year prior to the Substitutions) for those Variable Contract owners who were Variable Contract owners on the date of the Substitutions:

Variable contracts	Expense cap		
	Large cap core focus fund	Core bond focus fund	Core bond strategy portfolio
MLLIC Investor Life	N/A	N/A	1.69%
MLLIC Investor Life Plus	N/A	N/A	1.69%
MLLIC Estate Investor Single	N/A	N/A	1.69%
MLLIC Estate Investor Joint	N/A	N/A	1.69%
MLLIC Prime Plan V	N/A	N/A	1.39%
MLLIC Prime Plan VI	N/A	N/A	1.54%
MLLIC Prime Plan 7	N/A	N/A	1.69%
MLLIC Prime Plan Investor	N/A	N/A	1.69%
MLLIC Portfolio Plus	2.28%	N/A	N/A
MLLIC Retirement Plus	2.33%	2.14%	N/A
MLNY Prime Plan V	N/A	N/A	1.39%
MLNY Prime Plan VI	N/A	N/A	1.54%
MLNY Prime Plan 7	N/A	N/A	1.69%
MLNY Prime Plan Investor	N/A	N/A	1.69%
MLNY Investor Life	N/A	N/A	1.69%

[4] Subaccount expenses refer to those asset-based expenses that are deducted on a daily basis from subaccount assets and reflected in the calculation of subaccount unit values. Examples of subaccount expenses may include the mortality and expense risk charge or administrative expenses.

Variable contracts	Expense cap		
	Large cap core focus fund	Core bond focus fund	Core bond strategy portfolio
MLNY Investor Life Plus	N/A	N/A	1.69%
MLNY Portfolio Plus	2.28%	N/A	N/A
MLNY Retirement Plus	2.33%	2.14%	N/A

24. Variable Contract owners have been notified of the amended and restated application by means of a supplement to the prospectus for each of the Variable Contracts that discloses that the Applicants have filed the amended and restated application and seek approval for the Substitutions.

25. Further, before the Effective Date, a notice (''Pre-Substitution Notice'') in the form of an additional supplement to the prospectuses for the Variable Contracts, will be mailed to Variable Contract owners setting forth the scheduled Effective Date and advising Variable Contract owners that contract values attributable to investments in the Substituted Portfolios will be transferred to the Replacement Portfolios, without charge and without counting toward the number of transfers permitted without charge, on the Effective Date. The Pre-Substitution Notice will state that, from the date the amended and restated application was filed with the Commission through the date 30 days after the Substitutions, Variable Contract owners may make one transfer of contract value from the subaccount corresponding to the Substituted Portfolios (before the Substitutions) or the Replacement Portfolios (after the Substitutions) to any other subaccount without charge and without that transfer counting toward the number permitted without charge under the Variable Contract. In addition, within five days after the Substitutions, any Variable Contract owners who were affected by the Substitutions will be sent a written notice informing them that the Substitutions were carried out and advising them of their transfer rights (''Post-Substitution Notice'').

Applicants' Legal Analysis

1. Section 26(c) of the 1940 Act prohibits any depositor or trustee of a unit investment trust that invests exclusively in the securities of a single issuer from substituting the securities of another issuer without the approval of the Commission. Section 26(c) provides that such approval shall be granted by order of the Commission, if the evidence establishes that the substitution is consistent with the protection of investors and the purposes of the 1940 Act.

2. Section 26(c) was intended to provide for Commission scrutiny of proposed substitutions which could, in effect, force shareholders dissatisfied with the substitute security to redeem their shares, thereby possibly incurring a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the proceeds of redemption, or both. The section was designed to forestall the ability of a depositor to present holders of interests in a unit investment trust with situations in which a holder's only choice would be to continue an investment in an unsuitable underlying security, or to elect a costly and, in effect, forced redemption. The Applicants submit that the Substitutions meet the standards set forth in Section 26(c) and that, if implemented, the Substitutions would not raise any of the aforementioned concerns that Congress intended to address when the 1940 Act was amended to include this provision.

3. The replacement of the Substituted Portfolios with the Replacement Portfolios is consistent with the protection of Variable Contract owners and the purposes fairly intended by the policy and provisions of the 1940 Act and, thus, meets the standards necessary to support an order pursuant to Section 26(c) of the 1940 Act. The Variable Series Funds is liquidating the Substituted Portfolios as a result of a Board determination that the performance of each Substituted Portfolio, in light of its narrow investment objectives and increased potential risk, has not met expectations and has generally lagged behind the performance of relevant stock market indices. As a result of these liquidations, the Applicants must transfer their Contract owners to a different investment option. The Applicants determined that it was in the best interests of the Contract owners to substitute them into currently available portfolios that have comparable, albeit broader, investment objectives. In addition, Applicants assert that the types of securities in which the Replacement Funds invest are virtually identical to those of their respective Substituted Portfolios.

4. MLIM currently serves as investment adviser for both the Substituted Portfolios and the Replacement Portfolios. Thus, the level of services and quality provided by MLIM will remain unchanged after the Substitutions. Further, the asset levels of the relevant classes of shares of the Replacement Portfolios should lead to lower expense ratios over time.

5. Apart from the replacement of the underlying investment vehicle, the rights of the Variable Contract owners and the obligations of MLLIC and MLNY under the Variable Contracts would not be altered by the Substitutions except that Variable Contract owners will not have the right to allocate contract value to subaccounts that invest in the Substituted Portfolios. In each case, however, the Substituted Portfolio has already been closed to additional allocations of premium and contract value. Variable Contract owners will not incur any additional tax liability as a result of the Substitutions. MLLIC and MLNY will bear the costs of any legal or accounting fees of the Substitutions and transactional expenses, including brokerage commissions.

6. From the date the amended and restated application is filed with the Commission to the date 30 days after the Effective Date, Variable Contract owners will have the right to make one transfer of contract value from the subaccounts invested in a Substituted Portfolio (before the Substitutions) or a Replacement Portfolio (after the Substitutions) to any other subaccount without charge and without that transfer counting toward the number permitted under the Variable Contract (regardless of whether during the accumulation period or the annuity period). Each Variable Contract owner will receive a prospectus supplement regarding the Substitutions and will, prior to the Effective Date, receive a prospectus for the relevant Replacement Portfolio. A Pre-Substitution Notice (in the form of an additional prospectus supplement) will also be mailed to Variable Contract owners prior to the Effective Date. The Pre-Substitution Notice will set forth the

scheduled Effective Date and advise Variable Contract owners of their transfer rights. The Effective Date will be no earlier than 20 days after the mailing of the Pre-Substitution Notice.

7. The Applicants note that, in accordance with the terms of each of the Variable Contracts, no sales charges or surrender charges will apply to transfers in connection with the Substitutions, and MLLIC and MLNY represent that no such charge shall be imposed. In addition, within five days after the Substitutions, any Variable Contract owners who were affected by the Substitutions will be sent a Post-Substitution Notice informing them that the Substitutions were carried out and advising them of their transfer rights. The Applicants assert that the procedures to be implemented are sufficient to assure that each Variable Contract owner's cash values immediately after the Substitutions shall be equal to the cash value immediately before the Substitutions, and that the Substitutions will not affect the value of the interests of those owners of other MLLIC and MLNY variable contracts (other than the Variable Contracts) who currently have contract value allocated to any of the portfolios of the Series Fund or the Variable Series Funds.

Applicants' Conditions

For purposes of the approval sought pursuant to Section 26(c) of the 1940 Act, the Substitutions described in the third amended and restated application will not be completed, unless all of the following conditions are met.

1. The Commission shall have issued an order approving the Substitutions under Section 26(c) of the 1940 Act, as necessary to carry out the transactions described in the third amended and restated application.

2. Each Variable Contract owner will have been sent (a) prior to the Effective Date, a copy of the effective prospectus relating to the relevant Replacement Portfolio, (b) prior to the Effective Date, a Pre-Substitution Notice describing the terms of the Substitutions and the rights of the Variable Contract owners in connection with the Substitutions, and (c) if affected by the Substitutions, a Post-Substitution Notice within five days after the Substitutions informing them that the Substitutions were carried out and advising them of their transfer rights.

3. MLLIC and MLNY shall have satisfied themselves that (a) the Variable Contracts allow the substitution of portfolios in the manner contemplated by the Substitutions and related transactions described herein, (b) the transactions can be consummated as described in the third amended and restated application under applicable insurance laws, and (c) that any applicable regulatory requirements in each jurisdiction where the Variable Contracts are qualified for sale have been complied with to the extent necessary to complete the transaction.

Applicants assert that, for the reasons summarized above, the proposed Substitutions meet the standards of Section 26(c) of the Act and that the requested order should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–8805 Filed 4–10–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25509; File No. 812–12668]

Lincoln Benefit Life Company, et al.

April 4, 2002.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of an application for an order pursuant to Section 26(c) of the Investment Company Act of 1940 (the ''1940 Act'') approving a substitution of underlying fund shares by certain unit investment trusts.

Applicants: Lincoln Benefit Life Company (''Lincoln Benefit''), Lincoln Benefit Life Variable Annuity Account (the ''VA Account''), and Lincoln Benefit Life Variable Life Account (the ''VL Account'') (collectively, the ''Applicants'').

Summary of Application: Applicants request an order to permit certain registered unit investment trusts to substitute shares of the T. Rowe Price MidCap Growth Fund (the ''Replacement Fund'') of the T. Rowe Price Equity Series, Inc. (''TRP Equity Series'') for shares of the Strong Discovery Fund II (the ''Replaced Fund'') of the Strong Variable Insurance Funds, Inc. (''Strong VI Funds'').

Filing Date: The application was filed on October 19, 2001, and amended and restated on March 19, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on April 29, 2002, and must 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 requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC, 20549–0609; Applicants, c/o Jorden Burt LLP, 1025 Thomas Jefferson Street, N.W., Suite 400 East, Washington, DC, 20007–0806, Attention: Christopher S. Petito, Esq.

FOR FURTHER INFORMATION CONTACT: Kenneth C. Fang, Attorney, or William J. Kotapish, Assistant Director, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, NW, Washington, DC, 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Lincoln Benefit is a stock life insurance company organized under the laws of the state of Nebraska in 1938. Lincoln Benefit is an indirect wholly-owned subsidiary of The Allstate Corporation.

2. The VA Account is a segregated asset account of Lincoln Benefit. It was established by Lincoln Benefit in 1992, in accordance with the laws of the state of Nebraska and is registered as a unit investment trust under the 1940 Act. Lincoln Benefit issues certain variable annuity contracts through the VA Account.

3. The VL Account was established by Lincoln Benefit in 1992 in accordance with laws of the state of Nebraska and is registered as a unit investment trust under the 1940 Act. The VL Account is used to fund certain variable life insurance policies issued by Lincoln Benefit.

4. The above noted segregated asset accounts are referred to as ''Separate Account Applicants.'' Certain variable annuity contracts and variable life policies issued by Lincoln Benefit through the Separate Account Applicants are referred to herein as ''Contracts.'' The variable interests under the Contracts are registered with the SEC under the Securities Act of 1933.

5. Strong VI Funds was organized as a Wisconsin corporation on December 28, 1990. Strong VI Funds currently

issues shares in four investment portfolios, of which the Replaced Fund is one. Shares of the Replaced Fund were sold to separate accounts of eleven insurance companies, including Lincoln Benefit, for the purpose of funding variable annuity and variable life insurance policies. Strong VI Funds is registered as an open-end management investment company under the 1940 Act and its shares are registered as securities under the 1933 Act. The Replaced Fund is managed by Strong Capital Management Inc. (''SCM''). SCM is not affiliated with Lincoln Benefit.

6. If the requested substitution order is granted, Lincoln Benefit, on behalf of the Separate Account Applicants, will substitute shares of the Replacement Fund, a series of the TRP Equity Series, for shares of the Replaced Fund. TRP Equity Series was organized as a Maryland corporation in 1994. It offers its shares in seven series. Shares of the Replacement Fund are offered at net asset value and are not subject to Rule 12b–1 fees. TRP Equity Series is registered as an open-end management investment company under the 1940 Act and its shares are registered as securities under the 1933 Act. Its shares are sold only to insurance company separate accounts to fund variable life insurance policies and variable annuity contracts. T. Rowe Price Associates, Inc. (''T. Rowe Price'') serves as investment adviser to the Replacement Fund. Neither T. Rowe Price nor the Replacement Fund is affiliated with Lincoln Benefit.

7. SCM is planning to close the Replaced Fund. SCM reached this conclusion based on the Replaced Fund's small asset size, lack of expected asset growth and lack of economies of scale. On April 5, 2001, the Replaced Fund's Board of Directors voted to close the Replaced Fund to new participation agreements. Applicants have been advised that SCM intends to recommend that the Replaced Fund be liquidated once its various insurance company shareholders have arranged for alternative investments. Applicants do not know how long this process might take.

8. On June 1, 2001, the Replaced Fund and its related parties notified Applicants that, as to the Replaced Fund, effective December 1, 2001, they were terminating the Participation Agreement between and among Lincoln Benefit Life Company, Strong VI Funds, SCM, and Strong Funds Distributors, Inc. (the distributor for the Replaced Fund), dated April 6, 1998. As a result of the termination, the Replaced Fund no longer will make its shares available for investment with respect to Contracts purchased after the effective date of the termination. The Replaced Fund will continue to honor purchase orders placed with respect to Contracts purchased prior to December 1, 2001.

9. Lincoln Benefit has determined that in light of the impending closure and liquidation of the Replaced Fund, it would be best for the company and the Contract owners invested in the Replaced Fund (''Owners'') to substitute the shares of the Replaced Fund with shares of the Replacement Fund (the ''Substitution''). If Applicants were to take no action until the Replaced Fund liquidates, affected Owners could be injured as a result of the likely increase in the Replaced Fund's expense ratio as other insurance companies exit the Replaced Fund. Accordingly, Applicants request the SEC's approval to effect the Substitution.

10. Lincoln Benefit will redeem for cash all of the shares of the Replaced Fund that it currently holds on behalf of the Separate Account Applicants at the close of business on the date selected for the Substitution. Lincoln Benefit, on behalf of each Separate Account Applicant, will simultaneously place a redemption request with the Replaced Fund and a purchase order with the Replacement Fund, so that each purchase will be for the exact amount of the redemption proceeds. As a result, at all times monies attributable to Owners then invested in the Replaced Fund will remain fully invested and will result in no change in the amount of any Owner's contract value, death benefit or investment in the applicable Separate Account Applicant.

11. The full net asset value of the redeemed shares held by the Separate Account Applicants will be reflected in the Owners' accumulation unit or annuity unit values following the Substitution. Lincoln Benefit has undertaken to assume all transaction costs and expenses relating to the Substitution, including any direct or indirect costs of liquidating the assets of the Replaced Fund, so that the full net asset value of redeemed shares of the Replaced Fund held by the Separate Account Applicants will be reflected in the Owners' accumulation unit or annuity unit values following the Substitution.

12. Applicants anticipate that until the Substitution occurs, SCM will conduct the trading of portfolio securities in accordance with the investment objectives and strategies stated in the Replaced Fund's prospectus and in a manner that provides for the anticipated redemptions of shares held by the Separate Account Applicants.

13. Applicants have determined, based on advice of counsel familiar with insurance laws, that the Contracts allow the Substitution as described in the application, and that the transactions can be consummated as described therein under applicable insurance laws and under the Contracts. In addition, prior to effecting the Substitution, Applicants will have complied with any regulatory requirements they believe are necessary to complete the transactions in each jurisdiction where the Contracts are qualified for sale.

14. Affected Owners will not incur any fees or charges as a result of the Substitution, nor will the rights or obligations of Lincoln Benefit under the Contracts be altered in any way. The proposed Substitution will not have any adverse tax consequences to Owners. The proposed Substitution will not cause Contract fees and charges currently being paid by existing Owners to be greater after the proposed Substitution than before the proposed Substitution. The proposed Substitution will not be treated as transfers for the purpose of assessing transfer charges. Lincoln Benefit will not, with respect to shares substituted, exercise any right it may have under the Contracts to collect transfer fees or impose any additional restriction on transfers during the Free Transfer Period, as defined in paragraph 16 below.

15. Lincoln Benefit has supplemented the prospectuses for the Contracts to reflect the Substitution. Within five days after the Substitution, Lincoln Benefit will send to Owners written notice of the Substitution (the ''Notice''), identifying the shares of the Replaced Fund that have been eliminated and the shares of the Replacement Fund that have been substituted. Lincoln Benefit will include in such mailing the applicable prospectus supplement for the Contracts of the Separate Account Applicants describing the Substitution. Lincoln Benefit also will mail a copy of the prospectus for the Replacement Fund to the Owners, unless they already have received a copy of this prospectus in the ordinary course.

16. Owners will be advised in the Notice that for a period of at least 30 days following the mailing of the Notice (the ''Free Transfer Period''), Owners may transfer all assets, as substituted, to any other available subaccount without limit or charge. In addition, Owners of variable annuity Contracts, who as a result of the Substitution are receiving variable annuity payments based on the Replacement Fund, will be permitted during the Free Transfer Period to transfer the substituted amounts to

variable annuity payments based on other subaccounts, without limit or charge, notwithstanding any limits on such transfers in the variable annuity Contracts.

Applicants' Legal Analysis

A. Section 26(c)

1. Section 26(c) of the 1940 Act provides that ''[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the [SEC] shall have approved such substitution.'' Section 26(c) of the 1940 Act was enacted as part of the Investment Company Act Amendments of 1970. Prior to the enactment of these amendments, a depositor of a unit investment trust could substitute new securities for those held by the trust by notifying the trust's security holders of the substitution within five (5) days after the substitution. In 1966, the SEC, concerned with the high sales charges then common to most unit investment trusts and the disadvantageous position in which such charges placed investors who did not want to remain invested in the substituted security, recommended that Section 26 be amended to require that a proposed substitution of the underlying investments of a trust receive prior SEC approval.

2. The purposes, terms, and conditions of the Substitution are consistent with the principles and purposes of Section 26(c) and do not entail any of the abuses that Section 26(c) is designed to prevent. Applicants submit that they *must* effect a substitution, in order to protect Owners from the potential adverse consequences of the closure and liquidation of the Replaced Fund. Applicants state that they selected the Replacement Fund as the substitute, because its investment objectives and policies are substantially similar to those of the Replaced Fund and it has lower expenses and better long-term performance. Owners will be assessed no charges whatsoever in connection with the Substitution and their annual fund expense ratios are expected to decrease. In addition, to the extent an Owner does not wish to participate in the Substitution, he or she is free to transfer to any other option available under the relevant Contract prior to the Substitution and after the Substitution. No transfer fee will be charged, and the transfer will not count against any limit on free transfers under the Contracts.

3. Applicants submit that the Substitution does not present the type of costly forced redemption or other harms that Section 26(c) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act for the following reasons:

(a) The Substitution will continue to fulfill Owners' objectives and risk expectations, because the Replaced Fund and the Replacement Fund have substantially similar investment objectives, policies, and restrictions. Applicants believe that of the investment options currently available under the Contracts, the Replacement Fund is most similar to the Replaced Fund.

(b) after receipt of the Notice informing an Owner of the Substitution, an Owner may request that his or her assets be reallocated to another subaccount at any time during the Free Transfer Period without any limit or charge and without the transfer being counted against any limit on transfers under the Contracts. The Free Transfer Period provides sufficient time for Owners to consider their reinvestment options;

(c) the Substitution will be at net asset value of the respective shares, without the imposition of any transfer or similar charge;

(d) Lincoln Benefit has undertaken to assume all expenses and transaction costs, including, but not limited to, legal and accounting fees and any brokerage commissions, in connection with the Substitution;

(e) the Substitution will in no way alter the contractual obligations of Lincoln Benefit or the rights and privileges of Owners under the Contracts;

(f) the Substitution will in no way alter the tax benefits to Owners;

(g) the Substitution is expected to confer certain economic benefits on Owners by virtue of enhanced asset size and lower expenses, as described below;

(h) at the time of the Substitutions, the aggregate fees and expenses of the Replacement Fund are expected to be lower than those of the corresponding Replaced Fund; and

(i) Lincoln Benefit does not currently receive, and will not receive for three years from the date of the requested Commission order, any direct or indirect benefit from the Replacement Fund, T. Rowe Price Inc., or any of its affiliates at a higher rate than Lincoln Benefit has received from the Replaced Fund, SCM, or any of its affiliates, including without limitation Rule 12b–1 fees, shareholder service or administrative or other service fees, revenue sharing or other arrangements, either with specific reference to the Replacement Fund or as part of an overall business arrangement.

4. As described below, the Replacement Fund and the Replaced Fund have investment objectives and policies that are substantially similar.

5. The Replaced Fund's investment objective is to seek capital growth. The Replaced Fund pursues its objective by investing, under normal conditions, in securities that its manager believes offer attractive opportunities for growth. The Replaced Fund usually invests in a diversified portfolio of common stocks. It invests a substantial portion of its assets in the stocks of small and mid-capitalization companies. These are chosen through a combination of in-depth fundamental analysis of a company's financial reports and direct, on-site research during company visits. When the manager believes market conditions favor fixed income investments, the manager has the flexibility to invest a significant portion of the Replaced Fund's assets in intermediate- and long-term investment grade bonds. To a limited extent, the Replaced Fund may also invest in foreign securities.

6. The Replacement Fund's investment objective is to provide long-term capital appreciation by investing in mid-cap stocks with potential for above-average earnings growth. The Replacement Fund pursues its objective by investing at least 65% of its assets in a diversified portfolio of common stocks of mid-capitalization companies whose earnings the adviser expects to grow at a faster rate than the average company. While most assets will be invested in U.S. common stocks, other securities may also be purchased, including foreign stocks, futures, and options in keeping with the Replacement Fund's objective.

7. Applicants represent that the Replacement Fund has objectives, policies, and restrictions substantially similar to the objectives, policies and restrictions of the Replaced Fund. The only significant investment difference between the Replaced Fund and the Replacement Fund is that the Replacement Fund's investment objective requires it to invest primarily in the stocks of mid-capitalization companies, whereas the Replaced Fund may invest in stocks of companies of all sizes. In practice, however, the Replaced Fund invests a substantial portion of its assets in mid- and small-capitalization stocks. As a result, the investment strategies of the two funds overlap substantially. Moreover, Owners who currently invest in the subaccounts corresponding to the Replaced Fund will be able to continue to invest in

small-capitalization stocks by allocating contract value to other investment options available under the Contracts.

8. Accordingly, Lincoln Benefit has specifically determined that the Replacement Fund is an appropriate investment vehicle for Owners who have allocated value to the Replaced Fund and that the Substitution will be consistent with Owners' investment objectives and risk expectations.

9. The fees and expenses of the Replacement Fund will be less than the Replaced Fund's fees and expenses. The total expenses for the Replacement Fund for the year ended December 31, 2001, were 0.85% of net assets (0.85% management fee, 0.00% other expenses). The total net expenses for the Replaced Fund for the year ended December 31, 2001, were 1.20% of net assets (1.00% management fee, and 0.20% other expenses) (With respect to the Replaced Fund, SCM may voluntarily waive its fees. In 2001, SCM did not waive any fees. The Replacement Fund does not have any fee waiver or expense reimbursement arrangement). Lincoln Benefit is entitled to receive a service fee from the investment adviser of each Fund in return for providing certain administrative support services. Applicants represent that the service fee rate will not increase as a result of the Substitution.

10. The Replacement Fund has significantly more assets than the Replaced Fund. It is expected that the lower expense ratios should continue as a result of the significantly greater assets of the Replacement Fund.

11. Since its inception on December 31, 1996 the Replacement Fund has had average annual total returns of 13.81%, which are significantly higher than the Replaced Fund's five-year average annual returns of 6.41%. In light of the long-term perspective that is more appropriate under variable contracts, Applicants believe that the longer-term results are most significant for Owners. Moreover, in any event, as a result of the planned closing of the Replaced Fund, its performance no longer will be available to Owners. While there is no guarantee that past performance will continue, the foregoing return data support Applicants' view that the Substitution is not expected to diminish performance or otherwise reduce Contract values.

12. Applicants request an Order of the SEC pursuant to Section 26(c) of the 1940 Act to permit them to effect the Substitution on the terms set forth in the Application.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–8806 Filed 4–10–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following additional meeting during the week of April 8, 2002: an additional closed meeting will be held on Tuesday, April 9, 2002, at 2:30 p.m. Commissioner Hunt, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meeting scheduled for Tuesday, April 9, 2002, are:

Formal orders of private investigation;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and

A litigation matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: April 8, 2002.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–8884 Filed 4–9–02; 11:33 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 3976]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Afghanistan Women's Teacher-Training Project

SUMMARY: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the Afghanistan Women's Teacher-Training Project. Public and private non-profit organizations or universities meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to enhance the skills of Afghan women teachers working in basic education. The project will be conducted in three phases and Bureau funding of up to $200,000 is currently available to support one grant. Should additional funding become available, we would anticipate increasing participant numbers.

PROGRAM INFORMATION

1. Overview

The Bureau of Educational and Cultural Affairs seeks to assist in the on-going efforts to re-establish the ability of the government of Afghanistan to deliver education to all its children by providing a project which targets potential master teachers or teacher trainers. Concentrating on women teachers will offer a sharp contrast to the actions of the previous regime in which women were systematically stripped of their positions and careers in the education field. The Afghan Women's Teacher Training Project will augment the skills of Afghan women teachers working in basic education. The selected participants should have demonstrated their commitment to teaching in recent years by serving Afghanistan's children.

All programming and logistics including design and implementation of the academic, cultural, and administrative components will be the responsibility of the applicant. These responsibilities include (1) a three-phased academic component in Afghanistan and the U.S. that provides for an assessment of the relevant needs of teachers and the education system, recruitment of ten master teachers and their exposure to relevant basic education curricula, train the trainer skills, educational materials and technology, and education policy topics that would benefit basic education teachers in Afghanistan, and follow-on training preferably in Afghanistan, (2) a

cultural component that complements and reinforces material covered in the academic component, during four weeks in the U.S. including a home stay and a visit of no less than four days in Washington, DC. The grantee organization will be expected to arrange and budget for housing, meals, transportation, allowances for incidental expenses, books, and excess baggage.

Responsibilities for this particular project include:

1.A. Needs Assessment: After receipt of the grant the grantee institution should carry out a needs assessment in Afghanistan to determine what topics teachers and school administrators, appropriate Afghan education officials, and the U.S. Embassy Kabul Public Affairs section identify as most relevant to Afghan basic education and develop the project around those perceived priorities. At the time of assessment the Bureau and Embassy Kabul should be consulted about the feasibility of and timeline for conducting the project as designed in the applicant's proposal.

1.B. Recruitment and Selection: The grant recipient will be responsible for identifying ten Afghan women participants for the U.S. phase of the project. The participants should be basic education teachers or specialists with a strong commitment to rebuilding the teaching corps of Afghanistan. Participants could come from among those who ran home-based schools, especially for girls, in Afghanistan or Pakistan during the Taliban regime. They might include women who are serving in the current Ministry of Education or a provincial government department, and who have basic education responsibility in areas such as curriculum, educational materials development or supervision. The recruitment methodology and specific criteria for selection should be outlined in the proposal, including language skills that will be required of participants. Applicants should expect to carry out the entire selection process, with the understanding that the Bureau and the Public Affairs Section of the U.S. Embassy in Kabul must be consulted during the recruitment and selection process.

Applicants should identify in-country (Afghanistan-based) partner organizations and individuals with whom they are proposing to collaborate and describe in detail previous cooperative projects undertaken by the organization(s)/individual(s). Specific information about in-country partner's activities and accomplishments is required and should be included in the section on ''Institutional and Language Capacity.'' Please include letters of project commitment from any in-country partners.

1.C. Training Workshops: Participants will travel to the U.S. for a four-week training program to enhance their expertise and skills so that they become master teachers. Although the program will reference American examples of education reform, the wide disparity between the American and Afghanistan contexts demands that the focus be on the Afghan education system. Any American examples that are used must have relevance and applicability to the realities of Afghanistan. This project should not be perceived to be an American studies program or a program on concepts of American basic education, but a Teacher-Training Project specifically designed for Afghanistan educators. The approach should be one that provides in-depth content on a few selected themes rather than cursory information on a wide variety of topics. The workshop in the U.S. will upgrade their curriculum and materials development and train-the-trainer skills, while also affording opportunities to observe student-centered learning. Specific topics might include: establishing coordination among the various components of the basic education system, turning policy into practice, testing, certification, staff development, community outreach, education technology, parental involvement and student government, etc. In addition, observation of U.S. classrooms and applied practices should be included. The activities should also provide Americans an opportunity to experience the culture of Afghanistan. Orientation sessions must be included for all foreign and American participants.

The project should also include a follow-up teacher training workshop, which ideally would be held in Afghanistan, in coordination with the ten previously trained Afghan participants, involving U.S. teacher-trainers identified by the grantee organization. The planning and conducting of the workshops should use an Afghan-driven approach. A modest stipend, perhaps $50 per month, should be budgeted for the ten Afghan women while the workshop is planned and implemented. The ten Afghan women would be expected to play a central role in the workshop phase. Design and content of the Afghan workshop would be determined with the ten participants while they still are in the U.S. phase of the teacher-training project. The follow-up workshop should reach out to at least 100 basic education teachers in Afghanistan and provide relevant education materials in Dari and Pashto to the participants. The project should be designed so that the sharing of information and training that occurs during the grant period will continue long after the grant period is over.

1.D. Timing: The project should be implemented at a time frame, such as a summer or winter break, that will cause the least disruption to the Afghan education system and the on-going responsibilities of the participants. Concurrence must be obtained from the Bureau and the Public Affairs Section of the U.S. Embassy in Kabul on the timing of the project.

2. Program Specific Guidlines

2.A. Travel: The Grant recipient must arrange all travel through their own travel agent in accordance with the ''Fly America Act'' and all government travel regulations (GTR).

2.B. Visa Requirements: Project participants traveling to the United States must obtain and comply with J–1 exchange visitor visa regulations. The Grant recipient is responsible for preparing for each participant a Certificate of Eligibility for Exchange Visitor J–1 status on a DSP–2019 (formerly known as an IAP–66) form with the U.S. organization or university's own program number. Applicant organizations must have authority to issue a Certificate of Eligibility (Form DSP–2019) or indicate in the proposal that they will seek it. Grant recipients with this authority may obtain Form DSP–2019 from their own grants or international students' office or, if unavailable there, from the Department of State's Exchange Visitor Program Designation Staff. J–1 visa authority must be obtained from the Department of State before foreign program participants or administrators can travel with funds from the award. For information on J–1 rules and regulations, contact: Exchange Visitor Program Designation, Office of Exchange Coordination and Designation, Department of State, SA–44, 301 Fourth Street, SW., Room 734, Washington, DC 20547, Phone: (202) 401–9810, Fax: (202) 401–9809.

2.C. Health Insurance Requirements: The Bureau provides limited accident and sickness, repatriation of remains, and medical evacuation insurance coverage for participants in the exchange phases of the Afghan Women's Teacher Training Project. The Bureau will provide the grantee with the necessary instructions and forms to complete prior to the travel phases for the U.S. and Afghan participants. Although the Bureau assumes the responsibility of providing limited insurance coverage for participants, the

grantee is responsible for enrolling all participants in the Bureau's health coverage program. The grantee will assist in presenting claims to insurance agency and consult with the Bureau on grantee health issues that may affect successful program completion. A plan for providing participants with ready access to medical care should be included in the proposal.

Please note that the Bureau's health insurance program is described in the Proposal Submission Instructions (PSI).

2.D. Proposal Content: Applicants should submit a complete and thorough proposal describing the project in a convincing and comprehensive manner. Since there is no opportunity for applicants to meet with reviewing officials, the proposal should respond to the criteria set forth in the solicitation and other guidelines as clearly as possible.

Proposals should address succinctly, but completely, the elements described below and must follow all format requirements. Proposals should include the following items:

TAB A—Application for Federal Assistance Cover Sheet

TAB B—Executive Summary

In one double-spaced page, provide the following information about the project:

1. Name of organization/participating institutions.
2. Beginning and ending dates of the program.
3. Proposed theme and nature of activity.
4. Funding level requested from the Bureau, total program cost, total cost sharing from applicant and other sources.
5. Scope and Goals.

a. Number and description of participants.

b. Wider audience benefiting from program (overall impact).

c. Geographic diversity of program, both U.S. and overseas.

d. Anticipated results (short and long-term).

TAB C—Calendar of activities/itinerary

Narrative—In 20 double-spaced, single-sided pages, provide a detailed description of the project addressing the areas listed below.

1. Vision (statement of need, objectives, goals, benefits).
2. Participating Organizations.
3. Program Activities (assessment, advertisement, recruitment, orientation, academic component, cultural program, participant monitoring, follow-up workshops).
4. Program Evaluation.
5. Follow-on.
6. Project Management.
7. Work Plan/Time Frame.

TAB D—Budget Submission

Applicants must follow the budget submission guidelines presented in the RFGP and PSI for this solicitation.

Budget Guidlines: Currently, the Bureau anticipates awarding one grant, not to exceed $200,000 under this grant competition. However, the number or funding level of grants may increase if additional funding becomes available. ECA grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. Organizations that cannot demonstrate at least a four year track-record implementing exchanges are not eligible to apply under this competition.

Applicants must submit a comprehensive budget for the entire program, not to exceed $200,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants must provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Applicants should include a budget narrative or budget notes for clarification of each line item. While there is no rigid ratio of administrative to program costs, priority will be given to proposals whose administrative costs are less than twenty five per cent of the total requested from ECA. Proposals should show strong administrative cost sharing contributions from the applicant, the in-country partner and other sources.

Allowable costs for the program include the following:

(1) International, economy-class airfare for participants.

By law, travel supported by the Bureau must be on U.S. flag carriers wherever possible. Use of foreign carriers when U.S. carriers are available may result in the grant organization being required to reimburse the Department for the cost of such travel.

(2) Domestic, economy-class travel to undertake eligible activities within the countries of the partner institutions.

(3) Local transportation allowances (e.g. car rental), which must be clearly justified in terms of need, length of visit, and cost savings. Ground transportation for group cultural and educational activities; ground transportation for airport arrival and departure.

(4) Costs of lodging, meals, and incidental expenses may not exceed the published U.S. government per diem allowance rates. Per diem rates can be found on the following Department of State website: *http://exchanges.state.gov/education/rfgps.* Actual costs may be less than the published per diem rates; dormitory accommodations and long-term rental arrangements are encouraged to enable applicants to avoid the costs of hotel accommodations and to employ other strategies for the donation of lodging, meals, and incidental expenses. Official per diem rates may change during the course of the project. Charges to the Department of State must be in compliance with U.S. government allowances in effect when the expense is incurred. Applicants are encouraged to arrange home stays to increase benefits derived from a cross-cultural experience.

(5) Educational materials and educational technology as appropriate. The proposal should explain use of the materials and technology in detail for the project in the content of the capacity in Afghanistan for the use of such technology. In addition, the proposal should indicate how the maintenance of any education technology tools would be sustained after the end of the grant.

(6) Priority will be given to proposals whose administrative costs are no more than twenty five per cent of the total requested from the Bureau. Administrative costs typically may include such expenditures as those listed in the sample budget format.

(7) Salary support at the U.S. or foreign partner institution for administrative assistance specific to the project is allowable, except for administrative expenditures incurred by government entities. Positions with project administrative duties should be identified. Pro-rated salary amounts for these individuals should be provided.

(8) A maximum daily fee of $300 is allowable to an external consultant reporting on the degree to which project objectives have been achieved. The amount requested for external consulting reporting must not exceed three percent of the total amount of project funding, and may be lower.

(9) Supplemental book allowance of $150 per person.

(10) Excess baggage allowance of $150 per person.

(11) Cultural activities: entrance fees, costs for Washington cultural and educational tour.

(12) Interpretation fees and/or translation of educational materials into Dari or Pashto. Interpreters with adequate skills and experience may be used for program activities as required.

(13) Escort Staff: Domestic transportation costs and per diem (or

lodging and subsistence) for grantee escort staff for overnight cultural activities and Washington visit (if necessary), and project management as required.

(14) A modest stipend for the ten Afghan women educators for use during the final planning and implementation phase of the workshop done in Afghanistan. Applicant should explain the rationale for the stipend and the proposed follow-up role of the teacher trainers. Stipends are not to be used as living expenses.

The Bureau will consider funding project activities in addition to those specifically listed in the RFGP as long as they are not designated unallowable.

Unallowable costs include:

(1) Salary support for government employees (salary support may only be requested for non-government employees performing project administrative duties).

(2) Travel and expenses for lodging, meals, or incidental costs of the dependents of program participants or administrators.

(3) Visits whose primary purpose is to plan activities that would take place outside the scope of the project.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/X–02–06.

FOR FURTHER INFORMATION, CONTACT: The Office of Global Educational Programs, Teacher Exchange, Branch, Room 349, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, (202) 401–5969, (fax 202) 401–1433, or Internet at *mpizarro@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Senior Program Officer Mary Lou Johnson-Pizarro on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's website at http://exchanges.state.gov/education/RFGPs. Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Friday, May 24 2002. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and eight copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/X–02–06, Program Management, ECA/EX/PM, Room 534 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5'' diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the US Embassy in Kabul for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom, and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. The program office, as well as the Public Diplomacy section in Kabul and the regional bureau will review all eligible proposals. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan. The recruitment and selection methodology of participants should be presented.

2. *Support of Diversity:* Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity.

3. *Institutional and Language Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Resumes for individuals mentioned in the proposal should be provided, including proposed U.S. and in-country staff, trainers, consultants, etc. Letters of support from partner organizations as well as site visit hosts should be included in the proposal. Proposals should also indicate the ability to communicate and translate materials using the Dari and Pashto languages.

4. *Area Expertise:* Proposals should reflect a practical understanding of the current political, economic and social

environment. The demonstration of an institutional record of successful exchange programs in Afghanistan, or nearby countries with past Bureau grants should be highlighted; activities funded by other donors or governmental groups will be considered. Proposals should also indicate knowledge of similar projects being conducted in Afghanistan.

5. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support), which insures that Bureau supported programs are not isolated events. Applicants should describe how responsibility and ownership of the program would be transferred to the in-country participants to ensure continued activity and impact. Programs that include convincing plans for sustainability will be given top priority.

6. *Project Evaluation:* Proposals should include a plan to evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. The Grantee will be expected to submit intermediate reports after each project component is concluded or quarterly whichever is less frequent. The project should be designed so that the sharing of information and training that occurs during the grant period will continue long after the grant period is over.

7. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Priority will be given to proposals whose administrative costs are no more than twenty five per cent of the total requested from ECA.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: April 4, 2002.

Rick A. Ruth,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 02–8835 Filed 4–10–02; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 3977]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Armenia School Connectivity Program; Request for Grant Proposals

SUMMARY: The Office of Citizen Exchanges, Youth Programs Division, of the Bureau of Educational and Cultural Affairs announces an open competition for the Armenia School Connectivity Program. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to expand the educational opportunities available in Armenia by providing access to the Internet and related training to help promote civic education and education reform. The anticipated amount of funding available for this program is $5,000,000.

Program Information

Overview

The Armenia School Connectivity Program builds on current efforts to promote civic education throughout Armenia by providing schools with Internet access and advancing education reform. To date, over 60 secondary schools have been equipped with computer classrooms that have access to the Internet, through previously funded ECA grant awards. The current grantee plans to increase this number significantly over the next year. These schools have been involved in a number of activities that include computer training, linkages with at least 20 U.S. schools, and cooperative curriculum development through Internet ties. Additionally, educators in each region have participated in professional on-site trainings in the U.S. to focus on technology, community development, civic education, and educational reform.

The Armenia School Connectivity Program (ASCP) is designed to further these efforts by increasing the number of Armenian secondary schools in the network and by expanding Internet use to the primary grades. Through this program, both primary and secondary schools in each region of Armenia will be able to incorporate civics and related resource materials into their curricula and improve general education under the guidance of specially trained teachers. In addition, this program will expand efforts to reach out to Armenian communities. Community representatives will receive technology training in order to access information and interact with international partners for the purpose of creating income-generating projects that can sustain Connectivity schools.

The provision of Internet access with related training and educational opportunities for the largest possible number of Armenian schools is a priority of the U.S. government in Armenia. The grantee(s) should work closely with the Bureau of Educational and Cultural Affairs (ECA) and the Public Affairs Section (PAS) of the U.S. Embassy in Yerevan to ensure that project implementation meets the policy goals for this program.

The goals of this program are: (1) To provide access to information via the Internet to schools across Armenia, including those in isolated areas; (2) to provide Armenian students with the opportunity to learn democratic values and to obtain information about the United States while developing technical computer-based skills; (3) to provide training and resources to improve the teaching of civic education and related fields in Armenian schools; (4) to generate and promote linkages to schools and communities in the United States and other countries; and (5) to make the computer centers self-sustaining once grant funding ends.

The main components of this program, for which grant funding is provided, are as follows:

• Computer centers—Building on the existing base, establish new centers at schools selected in consultation with PAS Yerevan and ECA.

• Internet access—Provide access to the Internet to as many Armenian primary and secondary schools as possible.

• Online projects—Link students and teachers at Armenian schools with their counterparts at U.S. schools in joint telecurriculum projects

• Training—Provide training for teacher-trainers who will in turn train teachers and students in the selected schools and, later, other community members

• Curriculum development—Develop educational resources that utilize the Internet and coordinate the use of curricula from other related programs

• Sustainability—Provide training to community representatives to assist them with identifying and developing income earning activities that will help sustain computer centers at participating schools

Guidelines

The number of grants to be awarded under this competition will be based upon the quality and responsiveness of proposals to the review criteria presented later in this Request for Grant Proposals (RFGP). For purposes of simplicity, these Guidelines refer to ''grant'' and ''grant recipient.'' Sub-grant and consortium arrangements are possibilities. This grant should begin on or about August 2002, subject to availability of funds. The grant period should be two years.

The grant recipient will be responsible for:

(1) Selecting schools in Armenia for the installation of a computer center, the provision of training, and the implementation of a civic education program that emphasizes use of the Internet. These selected schools will be partnered, either one-to-one or in small groups, with U.S. schools so that Armenian students and faculty may work on joint projects with their American peers over the Internet in order to practice their newly-developed knowledge of using this tool for educational purposes.

(2) Equipping the schools with computers, printers, and other items necessary to afford them Internet connectivity. This will be accompanied by improvements to the classrooms to ensure that the facilities are suitable and secure. Once established, a center will be staffed by a site monitor who will oversee its use.

(3) Training a core group of Armenian educators in Internet education, American Studies, English, civic education, curriculum development, and teaching methodologies. These educators will be employed by the grant recipient to train others in their respective regions. They will also be responsible for ongoing support, project implementation and site supervision. In addition to training in each region of Armenia, a limited number of exchanges û Armenian trainers to the United States and U.S. trainers to Armenia û will facilitate these training efforts and bring the new trainers in contact with teachers who are already skilled in using the Internet in the classroom. The training of teachers and students will focus on basic computer skills, use of electronic mail and bulletin boards, and use of the World Wide Web for research and for supplementing lesson plans. The Armenian educators will also supervise the site monitors and oversee school partnership projects.

(4) Developing the content of Internet activities, once schools have access to the Internet and the students and teachers have acquired basic computer and Internet skills. Armenian students and teachers should receive training and resources to use the Internet to learn about civil society, including the basics of democracy, volunteerism, conflict resolution, good citizenship, and civic responsibility, such as voting. Students and teachers may use the Internet for English and American Studies topics, such as literature, history, government, and geography, and for the improvement of teaching of such subjects as economics and social studies researching the riches of the Internet and learning to use them in the standard curriculum. The development of educational resources, including the incorporation of materials created on other USG funded initiatives and other available and appropriate educational materials, will be a key responsibility of the grant recipient.

(5) Developing sustainability strategies in communities where schools have been selected. Projects may foster the development of local businesses using Internet technology. Community representatives may identify income-generating activities and will use technology to shape a sustainable development path for the computer centers in their communities. Community members may receive training in issues such as developing a needs assessment, entrepreneurship, management, marketing, and fundraising.

(6) Providing on-going support for schools that are currently on the program. This includes connectivity, upgrades, training, online projects, troubleshooting, and staff support. Neighboring schools should be included, as much as possible, in projects, training and special events. For a list of schools in the existing network, contact the Bureau Program Officer Anna Mussman at *amussman@pd.state.gov.*

Programs must comply with J–1 visa regulations. Please refer to the Solicitation Package for further information.

The Bureau reserves the right to accept proposals in whole or in part and make an award or awards in accordance with what serves the best interest of the Armenia School Connectivity Program. In the selection of participants, the Bureau and the U.S. Embassy retain the right to review all participant nominations and to accept or refuse participants recommended by the grantee institution(s). Awards will be subject to periodic reporting and evaluation requirements.

Budget Guidelines

All organizations applying under this competition must demonstrate in their proposal narrative a minimum of four years experience managing and conducting international exchange programs. Bureau grant guidelines require that organizations with less than four years experience conducting and managing international exchanges be limited to $60,000 in Bureau funding. It is anticipated that the grant or grants awarded under the competition will total $5,000,000 and exceed the $60,000 ceiling. Therefore organizations with less than four years experience, per above, are not eligible to apply under this competition.

The Bureau reserves the right to accept proposals in whole or in part and make an award or awards in accordance with what serves the best interest of the Armenia School Connectivity Program. Applicants must submit a summary budget that includes all program components as well as breakdowns reflecting both administrative and program budgets. Applicants should provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Administrative costs, including indirect rates, should be kept to a minimum and cost-shared as possible.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau

concerning this RFGP should reference the above title and number ECA/PE/C/PY–02–63.

FOR FURTHER INFORMATION, CONTACT: The Youth Programs Division, Office of Citizen Exchanges, ECA/PE/C/PY, Room 568, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, (202) 619–5904; Fax: (202) 619–5311; E-mail: *amussman@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Anna Mussman on all inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's website at *http://exchanges.state.gov/education/rfgps.* Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time, on June 3, 2002. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original, one fully tabbed copy, six copies tabbed A–E, and one additional cover sheet should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref: ECA/PE/C/PY–02–63, Ref.: Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

No later than one week after the competition deadline, applicants must also submit the Proposal Title Sheet, Executive Summary, and Proposal Narrative sections of the proposal as e-mail attachments in Microsoft Word (preferred), Word Perfect, or as ASCII text files to the following e-mail address: *amussman@pd.state.gov.* To reduce the time needed to obtain advisory comments from the Public Affairs Section of the U.S. Embassy in Armenia, the Bureau will transmit these files electronically to these offices.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as officers of the Bureau of European and Eurasian Affairs and the U.S. Embassy. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should display an understanding of the goals of the Armenia School Connectivity Program, as reflected in the priorities of this RFGP. Program objectives should have significant and ongoing results for the participating schools and their surrounding communities. Exchange activities should ensure sufficient use of program resources. Proposals should demonstrate a commitment to excellence and creativity in the implementation and management of the program.

2. Program planning: Proposals should respond to the requirements outlined in the RFGP. A detailed agenda and work plan, including a time line, should demonstrate feasibility and the applicant's logistical capacity to implement the program.

3. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

4. Support of Diversity: Proposals should demonstrate the applicant's awareness and understanding of diversity and a commitment to its achievement through administrative and programmatic aspects of the program.

5. Institutional Capacity and Ability to Achieve Program Objectives: Applicants should also indicate a minimum of four years experience conducting international exchange programs. Applicants should also demonstrate knowledge of the Armenian educational environment and display significant experience in developing Internet-based programs at the primary and secondary school levels. Proposals should exhibit an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements as determined by the Bureau's Grants Division. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals and objectives.

6. Follow-on Activities: Proposals should provide a strategy for the continuation of the schools' Internet access and online linkages to other schools.

7. Project Evaluation: Proposals should include a plan to evaluate the activity's success in achieving program objectives, both as the activities unfold and at the end of the program. The evaluation plan should include relating data collection and assessment tools. A draft survey questionnaire or other

technique plus description of a methodology to use to link outcomes to original project objectives are recommended. Program evaluation should provide observations about the program's influence within the participating schools as well as their surrounding communities. Successful applicants will be expected to submit intermediate reports for each three-month period of the grant.

8. Cost-effectiveness and cost-sharing: As many Armenian schools as possible should be included in this project. While lower ''per school'' figures will be more competitive, the Bureau expects all figures provided to be realistic. The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support.

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries* * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations* * *and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through the FREEDOM Support Act of 1992.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: April 4, 2002.

Rick A. Ruth,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 02–8836 Filed 4–10–02; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 3975]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Three Curriculum Development Projects for Armenia-Civic Education, Pre-Service Education and School Administrator Training

SUMMARY: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs in the Department of State announces an open competition for an assistance award to support planning, implementing and evaluating up to three education projects for Armenia: (1) High school civic education curriculum development; (2) curriculum development at pre-service pedagogical institutes in Armenia; and (3) curriculum development and leadership training for Armenian school directors. Organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to undertake one or more of these projects.

Overview and Project Objectives

Program Information

Overview: These projects are designed to assist Armenian educators to develop curricular materials in civic education at the high school level and to assist in training teachers and teacher trainers to use these materials in classrooms in Armenia; to develop and provide leadership training materials for Armenian school principals; and to assist pedagogical institutes in Armenia to develop courses for improvement of pre-service teacher training. The rationale for these projects is that improving civic education, educational leadership, and teaching practices in Armenia will better prepare students, teachers and school administrators to participate more actively in Armenia's emerging democratic society. Projects should promote productive relationships among members of the school community, including students, teachers, school administrators and parents, while training teachers to support these relationships.

Project Objectives

Applicants may submit proposals focusing on one, two, or all three of the projects. In the high school civic education project, proposals should emphasize curriculum design and faculty training in civic education for the eighth and ninth grade levels. In the educational leadership project, proposals should emphasize the development of training materials to improve the educational leadership skills of school directors. In the pre-service teacher education curriculum development project, proposals should outline a practical strategy to assist pedagogical institutes to develop new curricula and instructional materials for the training of pre-service teachers. Each project will include the following three phases of activity: recruiting and selecting Armenian participants; coordinating U.S. based training workshops; and testing and publishing the training or curricular materials. (Full details for each project phase are contained in the POGI).

Selection of Topics

For all three projects, applicants should suggest in their proposals the process for selecting the specific topics to be developed by the Armenian participants. Final determination of appropriate topics will be made in consultation with Armenian project participants before the start of U.S. based curriculum development and training workshops. Proposals should include a detailed plan for collaboration with the local Armenian partner organizations. (Please see the POGI for information on Armenian partner organizations available as project partners. Grantees may propose other partners than the ones listed. The proposal should provide justification for a recommendation of any partner not listed.) The Armenian partner organizations should be actively engaged with the U.S. grantee organization during the planning phase of project activities and implementation of project activities.

Guidelines

Project Planning and Implementation

Grant Duration

Grant activities should begin on or around September 1, 2002 and should last approximately thirty-six months. Grantees proposing to administer more than one project may suggest an individual project start date for each project as long as all project activities are completed within the approved grant period.

Planning

In Phase I of each project the U.S. grantee organization will collaborate with the Armenian partner organization(s) to coordinate recruitment and selection of Armenian educators to serve on curriculum development teams; and conduct planning trips to Yerevan for initial consultations. Planning trips should not exceed two weeks in length.

During the planning stage the grantee organization should consult with representatives of the Armenian Ministry of Education to negotiate, if possible, the following assistance to all Armenian participants: 1) Paid leave time for the Armenian participants during their stays in the U.S. and during any subsequent training work in Armenia; 2) Facilitation of the logistics of training sessions to be conducted in Armenia through appropriate signed agreements.

Project Implementation

In Phase II of each project, members of the curriculum development and training teams will spend approximately 6–12 weeks in the U.S. attending workshops organized by the U.S. grantees; observing relevant aspects of the U.S. educational system; and drafting curriculum or training materials in consultation with the U.S. specialists. The grantee organization will develop workshops which meet the needs of the Armenian participants through activities designed to introduce the Armenian teams to U.S. education specialists with appropriate expertise in civic education, pre-service teacher training, or educational leadership. Applicants should develop a timetable which incorporates significant time for writing curricular materials. Workshops should include field experiences which are relevant to the materials being produced (such as visits to schools, consultations with U.S. teachers or school principals, and mentored attendance at professional meetings).

In Phase III of each project, the grantee organization and the local Armenian partner(s) should plan and implement a program for testing, revising and publishing the materials developed in Phase II. Phase III project activities should emphasize outreach and training of local educators by the Armenian participants. (Please see the POGI for detailed guidelines for designing and implementing each project phase.)

Visa/Insurance/Tax Requirements

Programs must comply with J–1 visa regulations and the grantee organization will need to have authority to provide J–1 visa sponsorship by the time grant activities begin. Please refer to Solicitation Package for further information. Administration of the project must be in compliance with reporting and withholding regulations for federal, state, and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

Budget Guidelines

Applicants may submit a budget up to $250,000 for projects focusing on civic education curriculum development; $250,000 for pre-service teacher training curriculum development; $150,000 for projects focusing on educational leadership curriculum development or a budget of up to $650,000 for projects focusing on all three-project components. Requests for amount smaller than the maximum are eligible. The Bureau anticipates awarding up to three grants in a total amount not to exceed $650,000, to support program and administrative costs required to implement these projects. Proposals to administer more than one of these projects should reflect economies of scale in the administrative budget. The Bureau encourages applicants to provide maximum levels of cost sharing and funding from private sources in support of its programs. Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges are limited to $60,000 in Bureau funding. Therefore organizations with less than four years of experience in conducting international exchanges are ineligible to apply under this competition. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. The summary and detailed project and administrative budgets should be accompanied by a narrative, which provides justification for the amount needed.

Allowable costs for the program include the following:

(1) Administrative costs, including salaries and benefits, of grantee organization.

(2) Program costs, including general program costs and program costs for each participant from Armenia in the U.S. based curriculum development and training seminars and the Armenia-based pilot-testing activities. Please refer to the POGI for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number *ECA/A/S/U–02–09.*

FOR FURTHER INFORMATION, CONTACT: The Humphrey Fellowships and Institutional Linkages Branch, Office of Global Educational Programs, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, telephone: 202–619–5289; Fax: 202–401–1433; or *mwestbro@pd.state.gov,* to request a solicitation package.

The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Marie W. Grant on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at http://exchanges.state.gov/education/RFGPs. Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received by the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Friday, May 31, 2002. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and eight copies of the application should be sent to:

U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: *ECA/A/S/U–02–09* Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the US Embassy

for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. The program office, as well as the Public Affairs Section overseas, where appropriate will review all eligible proposals. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission and responsiveness to the objectives and guidelines stated in this solicitation. Proposals should demonstrate substantive expertise in civic education, educational leadership training and curriculum development.

2. Creativity and feasibility of program plan: A detailed agenda and relevant work plan should demonstrate substantive undertaking, logistical capacity, and a creative utilization of resources and relevant professional development opportunities. The agenda and work plan should be consistent with the program overview and guidelines described in this solicitation.

3. Ability to achieve project objectives: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities). The proposal should demonstrate an understanding of the specific diversity needs in Armenia and strategies for addressing these needs in terms of the project goals.

5. Institutional capacity and record: Proposed personnel and institutional resources should be adequate and appropriate to achieve the goals of the project. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by the grants staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

6. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives are recommended. Successful applicants will be expected to submit intermediate program and financial reports after each project component is concluded or quarterly, whichever is less frequent.

7. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without Bureau support), which ensures that Bureau supported programs are not isolated events.

8. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate and should reflect a commitment to pursuing project objectives. Proposals should maximize cost sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1993 (FREEDOM Support Act). Programs and projects must conform to Bureau requirements and guidelines outlined in the Solicitation Package. Bureau projects and programs are subject to the availability of funds.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or

increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: April 4, 2002.

Rick A. Ruth,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 02–8834 Filed 4–10–02; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 3973]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Youth Leadership Program for Bosnia and Herzegovina

SUMMARY: The Office of Citizen Exchanges, Youth Programs Division, of the Bureau of Educational and Cultural Affairs announces an open competition for Youth Leadership Program for Bosnia and Herzegovina. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 USC 501(c)(3) may submit proposals to conduct a three-week program in the United States focusing on leadership and civic education. The 22 participants will be secondary school students and teachers from Bosnia and Herzegovina. Funding will be provided through the Support for East European Democracy (SEED) Act.

Program Information

Overview: The goals of this program are: (1) To provide a civic education program that helps the participants understand civic participation and the rights and responsibilities of citizens in a democracy; (2) to develop leadership skills among secondary school students appropriate to their needs; and (3) to build personal relationships among high school students and teachers from Bosnia-Herzegovina and the United States.

Applicants should outline their capacity for doing projects of this nature, focusing on three areas of competency: provision of leadership and civic education programming, age-appropriate programming for youth, and work with individuals from Bosnia-Herzegovina or other areas that have experienced ethnic conflict. Applicants need not have a partner in Bosnia and Herzegovina, as the Office of Public Affairs (OPA) of the U.S. Embassy in Sarajevo will recruit and select the participants and provide a pre-departure orientation. The participants will be recruited from the cities in the Federation and in Republika Srpska, with the exception of Foca and Pale, and the Brcko District.

Guidelines: Grants should begin in August 2002 and conclude approximately 16 months later, depending on when the applicant proposes to conduct follow-on activities. The program should be implemented in June/July 2003. Participants may arrive in the United States around June 15, 2003. The timing of the project may be altered through the mutual agreement of the Department of State and the grant recipient. The program should be approximately three weeks in duration.

The participants will be 18 high school students between the ages of 15 and 18 who have demonstrated leadership abilities in their schools and/or communities and who are high academic achievers, and four teachers or other adults who work with youth who have demonstrated leadership and are expected to remain in positions where they can continue to do so. Participants will be proficient in the English language.

In pursuit of the goals outlined above, the program will include the following:

- A welcome orientation.
- Design and planning of activities that provide a substantive program on civic education and leadership through both academic and extracurricular components. Activities should take place in schools as much as possible and in the community. Community service and computer training will also be included. Programming should involve American participants wherever possible.
- Opportunities for the educators to work with their American peers and other professionals and volunteers to help them foster youth leadership, civic education, and community service programs at home.
- Logistical arrangements, homestays, disbursement of stipends/per diem, local travel, and travel between sites.
- A closing session to summarize the project's activities and prepare participants for their return home.
- Follow-on activities in Bosnia and Herzegovina after the participants have returned home designed to reinforce values and skills imparted during the U.S. program.

The proposal must demonstrate how the stated objectives will be met. The proposal narrative should also provide detailed information on the major program activities. Additional important program information and guidelines for preparing the narrative are included in the Project Objectives, Goals, and Implementation (POGI).

Programs must comply with J–1 visa regulations. Please refer to the other documents in the solicitation for further information.

Budget Guidelines

The Bureau anticipates awarding one grant in an amount of approximately $82,000 to support program and administrative costs required to implement this program. Organizations with less than four years of experience in conducting international exchange programs are not eligible for this competition. The Bureau encourages applicants to provide maximum levels of cost-sharing and funding from private sources in support of its programs.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY–02–72.

FOR FURTHER INFORMATION, CONTACT: The Youth Programs Division, ECA/PE/C/PY, Room 568, U.S. Department of State, 301 4th Street, SW., Washington, DC. 20547, telephone (202) 619–6299; fax (202) 619–5311; e-mail address: *clantz@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Carolyn Lantz on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's

website at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5:00 p.m. Washington, DC time on Friday, May 31, 2002. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted.

Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and six copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–02–72, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

No later than one week after the competition deadline, applicants must also submit the Executive Summary and Proposal Narrative sections of the proposal as e-mail attachments in MicrosoftWord (preferred), WordPerfect, or as ASCII text files, and the Budget as a Microsoft Excel file, if possible, to the following e-mail address: *clantz@pd.state.gov.* In the e-mail message subject line, include the following: ECA/PE/C/PY–02–72. To reduce the time needed to obtain advisory comments from the Office of Public Affairs at the U.S. Embassy in Sarajevo, the Bureau will transmit these files electronically to these offices.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* The proposed program should be well developed, respond to design outlined in the solicitation, and demonstrate originality. It should be clearly and accurately written, substantive, and with sufficient detail. Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. *Program planning:* A detailed agenda and work plan should clearly demonstrate how project objectives would be achieved. The agenda and plan should adhere to the program overview and guidelines described above. The substance of workshops, seminars, presentations, school-based activities, and/or site visits should be described in detail.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. The proposal should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Support of diversity:* The proposal should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity in program content. Applicants should demonstrate readiness to accommodate participants with physical disabilities.

5. *Institutional capacity and track record:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals. The proposal should demonstrate an institutional record, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by the Bureau's Office of Contracts. The Bureau will consider the past performance.

6. *Cross-cultural sensitivity and area expertise:* Since a number of young people in this region have been through considerable trauma during recent conflicts, it is essential that the applicant organization staff demonstrate an understanding of the stress and tensions that many of the participants are likely to have.

7. *Follow-on activities:* Proposals should provide a plan for a Bureau-supported follow-on visit by project staff to Bosnia and Herzegovina, plus a plan for continued follow-on activity, not necessarily with Bureau support, that insures that this program is not an isolated event.

8. *Project evaluation:* The proposal should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. The proposal should include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. The grant recipient will be expected to submit intermediate reports after each project component is concluded.

9. *Cost-effectiveness and cost sharing:* The applicant should demonstrate efficient use of Bureau funds. The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. The proposal should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

10. *Value to U.S.-Bosnia and Herzegovina Relations:* The proposed project should receive positive assessments by the U.S. Department of State's geographic area desk and overseas officers of program need,

potential impact, and significance in Bosnia and Herzegovina.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries...; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations...and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program is provided through Support for East European Democracy (SEED) legislation.

Lautenberg Waiver Language for FY02 Republika Srpska and Serbia

Section 581 of the FOAA restricts certain bilateral assistance to any country, entity or municipality whose competent authorities have failed to take ''necessary and significant steps to implement its international legal obligations to apprehend and transfer to the International Criminal Tribunal for the Former Yugoslavia (the 'Tribunal') all persons in their territory who have been publicly indicted by the Tribunal and to otherwise cooperate with the Tribunal.'' Deputy Secretary Armitage determined on February 22, 2002, that the Republika Srpska and Serbia had failed to meet this standard and are subject to sanctions.

Section 581(e), however, provides that restrictions on assistance may be waived upon a determination by the Secretary that ''such assistance directly supports the implementation of the Dayton Accords.'' Department of State Delegation of Authority 245 authorizes the Deputy Secretary to make this determination on behalf of the Secretary. The Deputy Secretary waived the application of Section 581 of the FOAA with regard to the following U.S. bilateral assistance programs, among others, in the Republika Srpska and Serbia:

Programs that support professional and student exchanges, student advising, Democracy Commission grants, civic education programs, media and information technology training, English teaching, linkages with U.S. universities and faculties, and civic education programs, as well as translations of economic, legal and political science texts;

The municipalities of Foca and Pale in the Republika Srpska are excluded from this waiver, because competent authorities have failed to take necessary and significant steps to apprehend and transfer war crimes indictees to the International Criminal Tribunal for the Former Yugoslavia.

The U.S. government will not provide bilateral assistance that specifically benefits these municipalities.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: April 3, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–8832 Filed 4–10–02; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 3974]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Burma Refugee Scholarship Program

SUMMARY: The Office of Academic Exchange Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the Burma Refugee Scholarship Program (BRSP). Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 USC 501(c)(3) may submit proposals to develop a scholarship program for approximately five Burmese students and professionals living in India as refugees. The BRSP scholarship recipients will receive undergraduate, graduate, or specialized training in a variety of fields at U.S. educational institutions for up to a three-year period.

Program Information

Overview: In 1990, at the request of Congress, the Bureau established the Burma Refugee Scholarship Program. Public Law 101–246 directed the Bureau to provide grants to Burmese students and professionals who fled Burmese repression after 1988 and are now living outside Burma.

The goal of the BRSP is to support democratic development in Burma by helping to educate potential leaders who could assist with Burma's future transition to a democratic government. The program ensures that selected Burmese, who are one day expected to assume leadership roles in their country, have an opportunity to pursue higher education in the U.S. and to obtain firsthand knowledge of American democratic institutions. It is the Bureau's intent to provide grantees with programs of the highest quality that meet the students' academic and personal needs and to further the Bureau's mission to promote mutual understanding. At the present time, the BRSP grantees do not return to Burma following their grants, but are given Significant Public Benefit Parole (asylum) in the U.S.

Guidelines: Program administration activities should cover the time period from approximately August 31, 2002—December 31, 2005. The projected grantee caseload is expected to be approximately five new students, who would ideally begin U.S.

English language training in late summer/ early fall 2003. BRSP scholarships are offered for up to two years of specialized training or academic study at the undergraduate or graduate level, with the provision of up to one year of pre-academic English language training. Students with undergraduate degrees who are bridging to a master's program would also be eligible.

The successful applicant organization will have responsibility for program administration, which includes the recruitment and selection of eligible Burmese candidates living in India, the placement of students at an appropriate U.S. academic institution, and the supervision of students' academic programs and personal adjustment to the United States.

Administration in the Region: The organization must work closely with the U.S. Immigration and Naturalization Service and the U.S.

Embassy in India to coordinate appropriate documentation for BRSP grantees' entry into the United States.

Applicant proposals should include a plan to provide for publicity, recruitment, and selection in India. The organization will be responsible for administering the program through its own resources and subcontractors, as required. The organization must also provide relocation or transition assistance to the students in the U.S. at the time their studies are terminated.

Requirements and Implementation: The proposal should respond to and describe the following major requirements:

—Planning and monitoring the entire exchange program including
  —publicizing the program to appropriate audiences in India using such methods as media, alumni networks, local educational institutions, and NGOs;
  —distributing, answering inquiries about, and receiving applications. (This may require the assistance of volunteers or paid staff in the region and/or special mailing arrangements);
  —selecting and notifying participants;
—planning relevant travel;
—placing at U.S. universities;
—conducting orientations;
—providing housing/stipends;
—providing on-going advising and student services;
—conducting cross cultural counseling;
—planning cultural and community enrichment activities about the U.S.;
—organizing internships and professional development;
—providing evaluation and alumni activities; and
—providing careful fiscal management.

To the extent possible, the applicant should designate a contact person in India who would provide assistance with dissemination and submission of applications.

Length of Program: The proposed length of the Burmese refugee scholarships is up to three years—up to one year of intensive English-language training followed by up to two years of academic training. The duration of the scholarship grant should not exceed three years. Students must understand this policy in advance. Where there are compelling circumstances, at the discretion of the project director and the Bureau's program officer, students may receive a limited extension to complete their degrees. Summer periods should be used for a mix of academic, professional, and cultural enrichment activities.

Pre-academic and English-Language Training: Applicants must describe plans for pre-academic preparation and English-language training, and for administering TOEFL or other test(s) as required by applicant institutions. It is assumed that most participants in this scholarship program will need up to one year of English-language instruction. Several levels of intensive English-language courses, from beginning to advanced, should be made available. The Bureau recommends that participants be tested immediately after the initial orientation to determine which level of English-language courses is appropriate. Students who need additional instruction beyond the first year will be required to take the additional instruction at their placement universities.

Recruitment: The recruitment material and scholarship publicity should provide all relevant information to potential applicants.

The key conditions, benefits, and terms of the program—what is, and what is not covered under the grant—should be fully described to candidates and nominees before they accept an award and travel to the U.S. The description of study opportunities should be basic and include essential information for applicants who are unfamiliar with the U.S. educational system, and the policy on dependents should be described.

Stipends: Please address the question of participant stipend levels in the narrative, including what expenses the stipend is intended to cover and the estimated monthly cost of housing provided to students. The current stipend level is $1025 per month.

Fields of Study: Eligibility fields for the FY–02 program should respond to critical development needs in Burma, promote mutual understanding and potential linkages with the U.S., and attract academically qualified students who are likely to become future leaders in Burma. The program announcement might include a statement such as: ''Eligible fields of study are drawn from the standard university curriculum, with priority given to agriculture, business administration, community/public health, economics, education, environmental studies, journalism, legal studies, natural resources management, political science, and public administration. If a subject area is proposed that is not among these priority fields, candidates should give special attention to explaining how this course of study would support the goals of the program.'' The final list of eligible fields and the text of the announcement must be reviewed and approved by the Office of Academic Programs, in consultation with the Bureau's East Asia and Pacific Regional Bureau (EAP/PD), prior to program implementation.

Selection Criteria: The Burma Refugee Scholarship Program is targeted toward Burmese students and professionals who reside outside Burma. The proposal should outline the selection criteria and selection process for the program. A corresponding statement of the selection criteria should be included in the program announcement for potential applicants. The leadership elements and the expectation that students will be active alumni following the conclusion of the program should be emphasized. Applicants should work closely with the Bureau in developing the selection criteria.

Timeline: The proposal should include a projected timeline, from the first recruitment announcement to student arrival and placement in the U.S., which takes into consideration the logistical and communications obstacles in the region. These include immigration requirements, travel arrangements, obtaining student records, and other time-consuming activities. The timeline should include dates of key events, such as ''candidates notified,'' ''pre-arrival materials mailed,'' etc.

U.S. Educational System, American Culture, and Institutions: It is essential that prior to arrival, as well as during orientation, applicants and participants be informed of the general nature, philosophy, and goals of U.S. higher education, particularly with regard to the broad scope of a liberal arts bachelor's degree program. Applicants and participants should clearly understand that they will be required to take courses in a variety of academic fields and should be briefed about the specifics of this grant. Students should receive guidance from the academic advisor to assist them in choosing appropriate courses.

To support the mutual understanding goal of the exchange, the Bureau is particularly interested in opportunities for academic and enrichment experiences related to U.S. institutions, society, and culture. It is recommended that the applicant stipulate that students take one or more courses in a U.S. Studies field, such as American history, literature, or government. The Bureau welcomes other creative ideas for exposing students to American institutions, such as discussion groups on U.S. issues, visits to political campaign offices and polling places, attendance at school board or city council meetings, exposure to American religious institutions, and civic-related volunteer work. Student attendance at museums, concerts, plays, and other

cultural events featuring American content should be encouraged and facilitated whenever possible. The awardee will be requested to keep the Bureau informed of the progress of this portion of the program throughout the year.

Program Activities: Applicants should describe plans for: Orientation, including pre-departure orientation; goals and approaches for the academic portion of the program, including any special activities such as internships or academic enrichment; cultural and community projects; evaluation and follow-up; and alumni-tracking. For example, volunteer work, student presentations to the local community, and matching of students with a local host family might be among the enrichment activities proposed. Internships should be designed to provide a close match with a student's field of academic or professional interest. Applicants must demonstrate that they can provide support systems (such as tutoring, counseling, host family, mentor or buddy system, consultation with student advisor and project director) to the students during the program.

Pre-arrival Information: Applicants should provide a sample of the pre-arrival information. Information should be complete and detailed. Key points concerning academic requirements, academic departments and available courses, housing, what to pack, personal budgeting considerations, policies on dependents, and other critical issues should be included in the material. The material should be designed to serve as a useful post-arrival reference as well, supplemented with additional information.

GPRA—Outcomes and Results: Applicants must include a statement of goals and expected outcomes for the program, including how results would be measured, as necessitated by Government Performance and Results Act (GPRA). Outcomes might include, but are not limited to, the following areas: developing a cadre of Burmese leaders with first-hand experience in the U.S., advancement of development goals for Burma, conflict resolution and building viable non-governmental institutions in Burma, or expansion of professional relationships between individuals and institutions in the U.S. and Burma. Project goals and planning should be linked to USG objectives. For example, if it is a goal to produce or influence leaders in Burma, potential leadership qualities should be among the selection criteria for applicants.

Measurements might include: alumni achievements and activities, the quality and quantity of institutional linkages established as a result of the program, and degree of positive change in participant and/or public attitudes as a result of the program.

Budget Guidelines

The Bureau anticipates awarding one grant of up to $300,000 to support program and administrative costs required to implement this program. The Bureau encourages applicants to provide maximum levels of cost sharing and funding from private sources in support of this program. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Proposals whose administrative costs are 20% or less of the total requested from ECA will be deemed more competitive.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to provide clarification.

Allowable costs for the program include the following:

A. Program Costs

(1). One-way economy fare international travel from their overseas location;

(2). Domestic travel;

(3). Tuition, room and board, stipends, incidental expenses, maintenance for university vacation periods;

(4). Educational materials;

(5). Cost of standardized test fees;

(6). Per diem for orientation, professional, academic, and cultural enrichment.

B. Administrative Costs

(1). Staff salaries and benefits;

(2). Staff travel;

(3). Communications (including telephone, fax, postage, etc.);

(4). Office supplies;

(5). Other direct costs.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the Burma Refugee Scholarship Program and number ECA/A/E/EAP–02–BRSP.

FOR FURTHER INFORMATION, CONTACT: Mary Hanlon, Office of Academic Exchange Programs, ECA/A/E/EAP, Room 208, United States Department of State, 301 4th Street, SW., Washington, DC 20547, phone: (202) 619–5406, fax: (202) 401–1728, email: *mhanlon@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Program Officer Mary Hanlon on all inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at *http://exchanges.state.gov/education/RFGPs*. Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on May 23, 2002. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposal is received by the above deadline. Applicants must follow all instructions in the Solicitation Package. The original and seven (7) copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E/EAP–02–BRSP, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5'' diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges.

Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the appropriate Public Diplomacy Section overseas. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards grants or cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue, and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials, and follow-up activities).

6. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

9. Project Evaluation: Proposals should include a plan to evaluate the project's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology used to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

10. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals whose administrative costs are 20% or less of the total requested from ECA will be deemed more competitive.

11. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: April 4, 2002.

Rick A. Ruth,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 02–8833 Filed 4–10–02; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08–02–010]

Lower Mississippi River Waterway Safety Advisory Committee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee

(LMRWSAC) will meet to discuss various issues relating to navigational safety on the Lower Mississippi River and related waterways. The meeting will be open to the public.

DATES: The next meeting of LMRWSAC will be held on Tuesday, May 7, 2002, from 9 a.m. to 12 a.m. (noon). This meeting may adjourn early if all business is finished.

ADDRESSES: The meeting will be held in the basement conference room of the Hale Boggs Federal Building, 501 Magazine Street, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Lieutenant Ricardo Alonso, Committee Administrator, telephone (504) 589–4222, Fax (504) 589–4241. This notice is available on the Internet at http://dms.dot.gov.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC). The agenda includes the following:

(1) Introduction of committee members.
(2) Remarks by CAPT S. Rochon, Executive Director.
(3) Approval of the October 16, 2001 minutes.
(4) Old Business:
  (a) Captain of the Port status report.
  (b) VTS update report.
  (c) PORTS update report.
(5) New Business.
(6) Next meeting.
(7) Adjournment.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meetings, contact the Committee Administrator at the location indicated under **ADDRESSES** as soon as possible.

Dated: April 4, 2002.

Roy J. Castro,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 02–8787 Filed 4–10–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular: Advisory Circular (AC) 23.1419–2B, Certification of Part 23 Airplanes for Flight in Icing Conditions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed revised advisory circular (AC); Request for comments.

SUMMARY: This notice announces the availability of and request for comments on a proposed revised AC, which provides information and guidance concerning demonstrating compliance with the ice protection requirements in Title 14 of the Code of Federal Regulations (14 CFR) part 23.

DATES: Comments must be received on or before June 10, 2002.

ADDRESSES: Send all comments on the proposed revised AC to the individual identified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Paul Pellicano, Aerospace Engineer, FAA; Atlanta Aircraft Certification Office, 1895 Phoenix Blvd, Suite 450, Atlanta, GA 30349; telephone: (770) 703–6064; facsimile: (770) 703–6097; e-mail: *paul.pellicano@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

You may obtain a copy of this proposed revised AC by contacting the person named above under **FOR FURTHER INFORMATION CONTACT**.

We invite you to send comments on the proposed revised AC. You must identify AC 23.1419–2B in the subject and send comments to the (e-mail preferred) address specified above. The FAA will consider all comments received by the closing date for comments before issuing the final AC. We may change the proposed revised AC because of the comments received.

Background: This proposed revised AC sets forth an acceptable means, but not the only means, of demonstrating compliance with the ice protection requirements in Title 14 of the Code of Federal Regulations (14 CFR) part 23. The FAA will consider other methods of demonstrating compliance that an applicant may elect to present. This material is neither mandatory nor regulatory in nature and does not constitute a regulation. Accordingly, the FAA is proposing and requesting comments on proposed revised AC 23.1419–2B, which will provide more detailed and uniform guidance in showing compliance with the existing regulation.

Issued in Kansas City, Missouri, on March 29, 2002.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–8780 Filed 4–10–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aging Transport Systems Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of public meeting

SUMMARY: This notice announces a public meeting of the FAA's Aging Transport Systems Rulemaking Advisory Committee (ATSRAC).

DATES: The FAA will hold the meeting on April 24 and 25, 2002, from 9 a.m. to 4 p.m. on the first day and from 8 a.m. to 3:30 p.m. on the second day.

ADDRESSES: Honeywell, 1944 E. Sky Harbor Circle, Phoenix, Arizona 85034.

FOR FURTHER INFORMATION CONTACT: Shirley Stroman, Office of Rulemaking, ARM–208, FAA, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470; fax (202) 267–5075; or e-mail *shirley.stroman@faa.gov*.

SUPPLEMENTARY INFORMATION: This notice announces a meeting of the Aging Transport Systems Rulemaking Advisory Committee, which will be held at Honeywell, 1944 E. Sky Harbor Circle, Phoenix, Arizona 85034.

The agenda topics for the meeting will include the following:

- Update on the Enhanced Airworthiness Programs for Airplane Systems (EAPAS) Plan
- Status of FAA's Research and Development Program on Aging Systems
- Review of the Intrusive Inspection Recommendations
- Discussion of Draft Reports from the Wire System Certification Requirements and Standard Wire Practice Manual Harmonization Working Groups
- Discussion of Draft Report and Advisory Circular 120–xx from the Enhanced Maintenance Criteria for Systems Harmonization Working Group
- Status of the Enhanced Training Program for Wire Systems Harmonization Working Group's Tasks

Meeting attendance is open to the public. However, space will be limited

by the size of the available meeting room. The FAA will provide teleconference services to individuals who wish to participate by telephone and who submit their requests before April 16th. If you use the teleconference service from within the Washington, DC metropolitan calling area, the call would be considered local. However, callers from outside this calling area will be responsible for paying long-distance charges. In addition to teleconferencing services, we will provide sign and oral interpretation, as well as a listening device if requests are made within 7 calendar days before the meeting. You may arrange for these services by contacting the person listed under the **FOR FURTHER INFORMATION CONTACT** heading of this notice.

The public may present written statements to the Committee by providing 20 copies to the Committee's Executive Director or by bringing the copies to the meeting. Public statements will only be considered if time permits.

Issued in Washington, DC, on March 29, 2002.

Anthony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 02–8785 Filed 4–9–02; 9:30 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (02–08–C–00–YKM) to impose and use a passenger facility charge (PFC) at Yakima Air Terminal-McAllister Field, Submitted by the Yakima Air Terminal Board, Yakima Air Terminal-McAllister Field, Yakima, Washington

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Yakima Air Terminal-McAllister Field under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 13, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bob Clem, Airport Manager, at the following address: 2400 West Washington Avenue, Yakima, Washington 98903. Air Carriers and foreign air carriers may submit copies of written comments previously provided to Yakima Air Terminal-Mcallister Field, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington, 98055. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 02–08–C–00–YKM to impose a PFC at Yakima Air Terminal-McAllister Field, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 29, 2002, the FAA determined that the application to impose a PFC, submitted by Yakima Air Terminal Board, Yakima, Washington, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 26, 2002.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: March 1, 2004.

Proposed charge expiration date: July 1, 2004.

Total requested for impose authority: $55,000.

Brief description of proposed project: Security Enhance Projects.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Air taxi/commercial operators enplaning less than 1% of airport's total enplanements.

Any person may inspect the application in person at the FAA office listed above **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, and notice and other documents germane to the application in person at the Yakima Air Terminal-McAllister Field.

Issued in Renton, Washington on March 29, 2002.

David A. Field,

Manager, Planning, Programming, and Capacity Branch, Northwest Mountain Region.

[FR Doc. 02–8784 Filed 4–10–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Terrain Awareness and Warning System

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability for public comment.

SUMMARY: This notice announces the availability of and request comments on a revised draft Technical Standard Order (TSO)–C151b, Terrain Awareness and Warning System. The draft TSO tells persons seeking a TSO authorization or letter of design approval what minimum performance standards (MPS) their terrain awareness and warning systems must meet to be identified with the applicable TSO marking.

DATES: Comments must identify the TSO file number and be received on or before June 29, 2002.

ADDRESSES: Send all comments on the proposed technical standard order to: Federal Aviation Administration, Small Airplane Directorate, File No. TSO–C151b, Regulations and Policy, ACE–111, 901 Locust, Room 301, Kansas City, MO 64106. Or deliver comments to: Federal Aviation Administration, Small Airplane Directorate 901 Locust, Room 301, Kansas City, MO.

FOR FURTHER INFORMATION CONTACT: Mr. Lowell Foster, ACE–111, Federal Aviation Administration, Small Airplane Directorate, 901 Locus, Room 301, Kansas City, MO. 64106, Telephone (816) 329–4125.

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications

received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

This is a revised TSO that sets forth minimum operational performance standards that a Terrain Awareness and Warning System (TAWS) equipment must meet to be identified with the TSO–C151b Class A, B, or C marking. This revision adds the requirements for a Class C designation.

The standards of this TSO apply to equipment intended to provide pilots and flight crews with both aural and visual alerts to aid in preventing an inadvertent controlled flight into terrain (CFIT) accident. Class A and B TAWS equipment are required by 14 CFR parts 91, 135, and 121. Class C equipment is intended for voluntary installations on aircraft not covered by the TAWS requirements in 14 CFR parts 91, 135, and 121.

How to Obtain Copies

A copy of the proposed TSO–C151b may be obtained via the information contained in section titled ''For Further Information Contact.'' Copies of RTCA Document No. RTCA/DO–160D, ''Environmental Conditions and Test Procedures for Airborne Equipment,'' dated July 29, 1997, RTCA/DO–161A, Minimum Performance Standards—Airborne Ground Proximity Warning Equipment,'' dated May 27, 1976, RTCA/DO–200A/EURCAE ED–76, ''Standards for Processing Aeronautical Data,'' dated September 18, 1998, and RTCA/DO–178B, ''Software Considerations in Airborne Systems and Equipment Certification,'' dated December 1, 1992, may be purchased from RTCA, Inc. 1828 L Street, NW., Suite 815, Washington, DC 20036.

Issued in Washington, DC, on March 29, 2002.

Nancy Lane,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 02–8783 Filed 4–10–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002–12005, Notice 1]

International Truck and Engine Corporation, Receipt of Application for Decision of Inconsequential Noncompliance

International Truck and Engine Corporation (International) of Fort Wayne, Indiana, has determined that certain model year 2002 trucks, series 4300, 4400, 7300, and 7400, do not meet the requirements of paragraph S4.2.2 of Federal Motor Vehicle Safety Standard (FMVSS) No. 104 ''Windshield Wiping and Washing Systems.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), International has petitioned for a decision that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

International relates that the noncompliant vehicles, 15,327 trucks in the U.S. (plus 1,216 trucks in Canada not covered by this petition,) were manufactured between October 24, 2000, and October 22, 2001, and were built with a washer bottle pump circuit that included a 5-amp fuse. When performing the washer system strength test which requires that the reservoir be filled with water and frozen, the 5-amp fuse blew 250 milliseconds after the first actuation of the washer switch. International has determined that this is noncompliant with regard to washer system strength requirements in FMVSS No. 104, paragraph S4.2.2, which states, ''Each multipurpose passenger vehicle, truck, and bus shall have a windshield washing system that meets the requirements of SAE Recommended Practice J942, November 1965, except that the reference to ''the effective wipe pattern defined in SAE J903, paragraph 3.1.2' in paragraph 3.1 of SAE Recommended Practice J942 shall be deleted and 'the pattern designed by the manufacturer for the windshield wiping system on the exterior surface of the windshield glazing' shall be inserted in lieu thereof.''

International does not believe that a blown fuse in the windshield washer circuit constitutes a risk to highway safety in the unique situation of frozen water in the washer reservoir. International's test results with the 5-amp fuse in the circuit indicated conformance to all system strength requirements of SAE J942, ''Passenger Car Windshield Washing Systems,'' including section 4.2.2(a) related to plugged nozzles, except for section 4.2.2(b), which International believes to be a very low risk of happening in an operational environment.

According to International, when operating the vehicle with the specified washer fluid for this system, the system would have a very low possibility of being frozen (in the mixed state of 47 percent, it has a freeze point of–48 degrees C). Therefore, the probability of blowing a fuse because of frozen fluid is very low.

International has had vehicles of various model types in operation for approximately 13 months before the date of the petition (December 7, 2001) with no reported field problems. Also warranty records for the washer system as of that date show a ''very low incident rate'' for the washer system as a whole (16 claims) compared with total vehicle population build (19,880). None of these claims relate to the failed test condition of frozen water in the washer reservoir.

Interested persons are invited to submit written data, views and arguments on the application described above. Comments should refer to the docket number and be submitted to : U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. After the Administrator has determined that the application will be granted or denied, a decision notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: May 13, 2002.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: April 5, 2002.

Stephen R. Kratzke,

Associate Administrator, for Safety Performance Standards.

[FR Doc. 02–8791 Filed 4–10–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 4, 2002.

The Department of 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 May 13, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0152.

Form Number: IRS Form 3115.

Type of Review: Extension.

Title: Application for Change in Accounting Method.

Description: Form 3115 is used by taxpayers who wish to change their method of computing their taxable income. The form is used by the IRS to determine if electing taxpayers have met the requirements and are able to change to the method requested.

Respondents: Business or other for-profit, individuals or households, not-for-profit institutions, farms.

Estimated Number of Respondents/Recordkeepers: 6,400.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing and sending the form to the IRS
Form 3115	20 hr., 34 min	3 hr., 15 min	4 hr., 55 min.
Schedule A	4 hr., 18 min	1 hr., 40 min	1 hr., 50 min.
Schedule B	4 hr., 46 min	45 min	2 hr., 4 min.
Schedule C	27 hr., 1 min	1 hr., 39 min	3 hr., 22 min.
Schedule D	5 hr., 1 min	1 hr., 59 min	2 hr., 9 min.

Frequency of Response: On occasion, Quarterly, Other (when needed).

Estimated Total Reporting/Recordkeeping Burden: 272,062 hours.

Clearance Officer: Glenn P. Kirkland, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 02–8802 Filed 4–10–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 4, 2002.

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 May 13, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1762.

Form Number: IRS Form 8050.

Type of Review: Extension.

Title: Direct Deposit of Corporate Tax Refund.

Description: This form is used to request a deposit of a tax refund directly into an account at any U.S. bank or other financial institution.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/Recordkeepers: 210,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—1 hr., 25 min.

Learning about the law or the form—6 min.

Preparing, copying, assembling, and sending the form to the IRS—7 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 348,600 hours.

OMB Number: 1545–1771.

Revenue Procedure Number: Revenue Procedure 2002–15.

Type of Review: Extension.

Title: Automatic Relief for Late Initial Entity Classification Elections-Check the Box.

Description: 26 CFR § 301.9100–1 and § 301–9100–3 provides the Internal Revenue Service with authority to grant relief for late entity classification elections. This revenue procedure provides that, in certain circumstances, taxpayers whose initial entity classification election was filed late can obtain relief by filing Form 8832 and attaching a statement explaining that the requirements of the revenue procedure have been met.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Other (once).

Estimated Total Reporting Burden: 100 hours.

Clearance Officer: Glenn P. Kirkland, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 02–8803 Filed 4–10–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Former Prisoners of War, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Former Prisoners of War will be held on April 22–24, 2002, at the Department of Veterans Affairs Central Office, 810 Vermont Avenue NW., Room

730, Washington, DC 20420. Each day the meeting will convene at 9 a.m. and end at 4:30 p.m. The meeting is open to the pubic.

The purpose of the committee is to advise the Secretary of Veterans Affairs on the administration of benefits under Title 38, United States Code, for veterans who are former prisoners of war, and to make recommendations on the needs of such veterans for compensation, health care and rehabilitation.

The agenda for April 22 will begin with an introduction of Committee members and dignitaries, a review of Committee reports, an update of activities since the last meeting, and period for POW veterans and/or the public to address the committee. The Committee will also discuss future plans for the VA POW Learning Seminars, and conclude with a report from the Special Medical Panel on Presumptive Conditions among Former Prisoners of War. The agenda on April 23 will include a review of VA's Compensation and Pension Service activities, including new outreach initiatives to Former POWs, as well as a progress report from VA's Presumptions Process Workgroup. The Committee will also hear presentations on the activities of the Veterans Health Administration, including a report on priority for POWs in Long-Term Health Care programs. The session will then hear a presentation from the Robert E. Mitchell Center for Prisoner of War Studies. The day will conclude with a general discussion. On April 24, the Committee's Medical and Administrative subcommittees will break out to discuss their activities and report back to the Committee.

Additionally, the Committee will review and analyze the comments discussed throughout the meeting for the purpose of assisting and compiling a final report to be sent to the Secretary.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. Ronald J. Henke, Director, Compensation and Pension Service (21), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. A report of the meeting and roster of Committee members may be obtained from Mr. Henke.

Dated: April 4, 2002.

By direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–8776 Filed 4–10–02; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Professional Certification and Licensure Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Professional Certification and Licensure Advisory Committee will meet at the Department of Veterans Affairs, Veterans Benefits Administration Education Conference Room 601V, 1800 G St. NW., Washington, DC, on Tuesday, April 23, 2002, from 8:30 a.m. to 4 p.m., and from 8 a.m. and 12 p.m. on Wednesday, April 24, 2002. The meeting is open to the public. The purpose of the committee is to review the requirements of organizations or entities offering licensing and certification tests to individuals for which payment for such tests may be made under chapters 30, 32, 34, or 35 of Title 38, United States Code.

On April 23, the meeting will begin with opening remarks and an overview by Ms. Sandra Winborne, Committee Chair. During the morning session, discussions will include outreach actions and training for State approving agency personnel. During the afternoon session, the Committee will discuss related programs including: Certification Opportunities On-Line, Defense Activities Non-Traditional Education Support, and Licensing and Certification Approval System. The day's agenda will conclude with a review of past unfinished business. On April 24, the meeting will include opportunities to discuss the materials presented on the previous day and any new business or other related issues the Committee deems appropriate.

Those planning to attend this open meeting should contact Mr. Giles Larrabee or Mr. Michael Yunker at (202) 273–7187. Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before the meeting, or within 10 days after the meeting. Oral statements will be heard at 9 a.m. Wednesday, April 24, 2002.

Dated: April 4, 2002.

By direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–8775 Filed 4–10–02; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 67, No. 70

Thursday, April 11, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

29 CFR Part 552

RIN 1215–AA82

Application of the Fair Labor Standards Act to Domestic Service

Correction

In proposed rule document 02–8382 beginning on page 16668 in the issue of Monday, April 8, 2002, make the following correction:

On page 16668, in the second column, under the heading ''**DATES**'', ''April 18, 2002'' should read, ''April 8, 2002''.

[FR Doc. C2–8382 Filed 4–10–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
April 11, 2002

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7163–7]

RIN 2060–AF28

National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action establishes final national emission standards for hazardous air pollutants (NESHAP) for certain types of affected sources at petroleum refineries. The affected sources include catalytic cracking units (CCU), catalytic reforming units, and sulfur recovery units, as well as associated by-pass lines. The EPA has identified petroleum refineries as major sources of hazardous air pollutants (HAP). Hazardous air pollutants that would be reduced by this final rule include organics (acetaldehyde, benzene, formaldehyde, hexane, phenol, toluene, and xylene); reduced sulfur compounds (carbonyl sulfide, carbon disulfide); inorganics (hydrogen chloride, chlorine); and particulate metals (antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, and nickel). The health effects of exposure to these HAP can include cancer, respiratory irritation, and damage to the nervous system. These final standards implement section 112(d) of the Clean Air Act (CAA) by requiring all petroleum refineries that are major sources to meet standards reflecting the application of the maximum achievable control technology (MACT). When fully implemented, this rule will reduce HAP emissions from the affected sources by nearly 11,000 tons per year tpy—an 87 percent reduction from current levels. Emissions of other pollutants such as volatile organic compounds (VOC), particulate matter (PM), carbon monoxide (CO), and hydrogen sulfide will be reduced by about 60,000 tpy.

EFFECTIVE DATE: April 11, 2002.

ADDRESSES: Docket No. A–97–36 contains supporting information used in developing this rule. The docket is located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For information on the basis for the rule, contact Mr. Robert B. Lucas, Waste and Chemical Process Group, Emission Standards Division (C439–03), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0884, electronic mail address, ''*lucas.bob@epa.gov;*'' for information concerning legal matters, contact Mr. Richard Vetter, Emission Standards Division (C439–03), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2127, electronic mail address, ''*vetter.rick@epa.gov*'' for questions concerning compliance determinations, contact Mr. Thomas Ripp, Office of Enforcement and Compliance Assurance (2223A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone number (202) 564–7003, electronic mail address, ''*ripp.tom@epa.gov*'' or for information on the test methods, contact Ms. Rima Howell, Emissions Monitoring and Analysis Division (D205–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0443, electronic mail address, ''*howell.rima@epa.gov*''. For applicability determination questions, refer to the table in the **SUPPLEMENTARY INFORMATION** section.

SUPPLEMENTARY INFORMATION: *Docket.* The docket is an organized and complete file of all the information considered by the EPA in the development of this rule. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) Other material related to this rulemaking is available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

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

Judicial Review. Today's action constitutes final administrative action on the proposed NESHAP for CCU, catalytic reforming units, and sulfur recovery units (63 FR 48890, September 11, 1998). Under section 307(b)(1) of the CAA, judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by June 10, 2002. Under section 307(b)(2) of the CAA, the requirements that are the subject of this document may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

Regional Contacts for Applicability Determination

Region I, Director, Air Compliance Programs, EPA New England, 1 Congress Street, Suite 1100 (SEA), Boston, MA 02114–2023, Phone contact: (617) 918–1656 FAX: (617) 918–1112.

Region II, U.S. EPA, 290 Broadway, New York, NY 10007–1866, Phone (212) 637–3000, FAX (212) 637–3526.

Region III, Dianne Walker (3AP11) U.S. EPA, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone: (215) 814–3297, FAX: (215) 814–5103.

Region IV, Leonardo Ceron, U.S. EPA, 61 Forsyth Street, SW., Atlanta, GA 30303–3104, Phone: (404) 562–9900, FAX: (404–562–8174.

Region V, Kathy Keith U.S. EPA, 77 West Jackson Boulevard, Chicago, IL 60604–3507, Phone: (312) 353–6956, FAX: (312) 353–4135.

Region VI, U.S. EPA, Martin E. Brittain (214) 665–7206, Jonathan York (214) 665–7289, Barry Feldman (214) 665–7439, Fountain Place, 12th Floor, Suite 1200, 1445 Ross Avenue, Dallas, TX 75292–2733, FAX: (214) 665–2146.

Region VII, Bill Peterson, U.S. EPA, 726 Minnesota Avenue, Kansas City, KS 66101, Phone: (913) 551–7881, FAX: (913) 551–7467.

Region VIII, Art Palomares (303–312–6332), e-mail: *Palomares.Art@epa.gov,* Tami Thomas-Burton (303–312–6581). e-mail: Thomas-burton.tami@epa.gov, U.S. EPA, MACT Enforcement, 999 18th Street, Suite 500, ENF–T, Denver, Colorado 80202, FAX: 303–312–6409.

Region IX, John Kim, U.S. EPA, 75 Hawthorne Street (AIR–5), San Francisco, CA 94105, Phone: (415) 744–1263, FAX: (415) 744–2499.

Region X, Kai–Hon Shum, U.S. EPA, Office of Air Quality, 1200 Sixth Avenue (OAQ–107), Seattle, Washington 98101, Phone: (206) 553–2117, FAX: 206–553–0149.

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	SIC code	NAIC	Examples of regulated entities
Industry	2911	32411	Petroleum refineries that operate CCU, catalytic reforming units, or sulfur recovery units.
Federal Government			Not affected.
State/local/tribal			Not affected.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.1561 of the final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline. The information in this preamble is organized as follows:

I. Background
II. Summary of Final Rule and Changes Since Proposal
A. Who must comply with this rule?
B. What equipment is covered?
C. When must I comply?
D. What are the emission limitations and other standards?
E. How do I demonstrate initial compliance?
F. How do I demonstrate continuous compliance?
G. What are the notification, recordkeeping, and reporting requirements?
III. Summary of Environmental, Energy, and Economic Impacts
A. What are the air quality impacts?
B. What are the cost impacts?
C. What are the economic impacts?
D. What are the non-air health and environmental impacts?
E. What are the energy impacts?
IV. Summary of Major Comments and Responses
A. Why did we extend the compliance date?
B. What is the new alternative nickel emission limitation?
C. Why did we not change the proposed nickel emission limitation?
D. How did we change the proposed monitoring requirements?
V. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use
F. Unfunded Mandates Reform Act of 1995
G. Regulatory Flexibility Act (RFA), as Amended by Small Business Regulatory Enforcement Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act of 1995
J. Congressional Review Act

I. Background

The CAA was created in part to protect and enhance the quality of the Nation's air resources to promote public health and welfare and the productive capability of its population. Section 112(d) of the CAA requires us (the EPA) to establish standards for all categories and subcategories of major sources of HAP and for area sources listed for regulation under section 112(c). Major sources are those that emit or have the potential to emit at least 10 tpy of any single HAP or 25 tpy of any combination of HAP. Area sources are stationary sources of HAP that are not major sources.

We received 40 public comments on the proposed NESHAP. Commenters included industry representatives and trade associations, State and local agencies, environmental groups, vendors, and technical experts. To provide interested individuals the opportunity for oral presentations of data, views, or arguments concerning the proposed rule, we held a public hearing on October 14, 1998, and extended the end of the public comment period from November 10, 1998, to December 1, 1998 (Docket A–97–36). Today's final rule reflects our full consideration of all the comments we received. Major public comments on the proposed rule along with our responses to these comments are summarized in this document. See the Response to Comment Document (Docket A–97–36) for detailed responses to all the comments.

II. Summary of Final Rule and Changes Since Proposal

We revised the overall format of the rule to make it easier to understand, implement, and enforce. Separate sections of this ''plain language'' final rule cover the requirements for each type of HAP (i.e., metal HAP, organic HAP, inorganic HAP, or overall HAP) from an affected source. Each section of the rule refers you (the refinery owner or operator) to tables at the end of the rule that list the specific rule requirements and give step-by-step instructions on how to demonstrate initial and continuous compliance.

For purposes of the final rule, the title has been changed to ''National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units'' to better describe the affected population. The source category list will be amended to reflect this name change in a separate action.

In the past year, six petroleum refining companies have signed voluntary settlements with EPA which will add controls for CCU and SRU that will comply with this final rule. We have not revised the impact estimates to reflect the controls resulting from these settlements.

A. Who Must Comply With This Rule?

The final rule (subpart UUU) applies to you if your petroleum refinery is a major source of HAP emissions and includes an affected source covered by the rule. Based on our data, we believe all 164 existing petroleum refineries in the U.S. and its territories are major

sources; 132 of these facilities have one or more of the affected sources subject to the rule requirements.

B. What Equipment Is Covered?

Section 63.1562 of the final rule identifies each type of affected source as well as equipment or processes not covered by the rule. As proposed, three types of existing, new, or reconstructed units are subject to the rule. These are:

- Each CCU that regenerates catalyst;
- Each catalytic reforming unit that regenerates catalyst; and
- Each sulfur recovery unit and the tail gas treatment unit serving it.

The rule also applies to each by-pass line serving a new, existing, or reconstructed affected source. We have clarified the applicability of the rule to emphasize that the unit is the affected source while the emission limits and standards apply to the specified type of vent associated with the unit.

The final rule applies only to the predominant type of CCU—those using a fluidized bed (i.e., fluid CCU). We also revised the applicability of the rule to exclude redundant sulfur recovery units not located at a petroleum refinery and used by the refinery only for emergency or maintenance backup. Consistent with the proposed rule, the final rule doesn't apply to a sulfur recovery unit that doesn't recover elemental sulfur, certain equipment associated with by-pass lines (i.e., low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, or pressure relief valves needed for safety reasons), or gaseous streams routed to a fuel gas system.

C. When Must I Comply?

Section 63.1563 of the final rule gives the compliance dates. As discussed further in section IV.A of this document, we have included provisions allowing an extended compliance date for existing fluid CCU located at a petroleum refinery that commits to hydrotreating the CCU feed to comply with the gasoline sulfur control requirements in the Tier 2 Motor Vehicle Emission Standards (40 CFR part 80) and the applicable emission limitations in subpart UUU. The compliance date for these existing affected sources will depend on when the refinery must meet the 30 parts per million (ppm) limit for gasoline sulfur content, but can't be any later than December 31, 2009. Otherwise, affected sources must comply within 3 years from today's date.

We also clarified the compliance dates for new or reconstructed affected sources. If you started your new or reconstructed affected source before today's date, you must comply with the applicable rule requirements by today. If you start your new or reconstructed affected source after today's date, you must comply with the rule requirements upon startup.

D. What Are the Emission Limitations and Other Standards?

The final rule includes emission limitations for HAP emissions of particulate metals and organic compounds from CCU, organic and inorganic compounds from catalytic reforming units, and reduced sulfur compounds from sulfur recovery units. An emission limitation means any emission limit, operating limit, opacity limit, or visible emissions limit. Surrogates are used in this rule to represent the HAP emissions. They allow easier, less expensive measurement and monitoring requirements. For CCU, PM and nickel (Ni) are used as surrogates for metal HAP. Carbon monoxide is used as a surrogate for organic HAP emissions. Total organic carbon (TOC) is a surrogate for organic HAP emissions from catalytic reforming units while hydrogen chloride (HCl) represents inorganic HAP emissions. Sulfur dioxide (SO_2) or total reduced sulfur (TRS) represent the reduced sulfur HAP emissions from sulfur recovery units.

We made no changes in the MACT floor determinations of control technologies serving as the basis of the proposed rule. The emission control technologies and limits are discussed in the preamble to the proposed NESHAP (63 FR 48890). However, we did revise in other respects the emission limitations and standards that reflect the performance of the MACT floor technologies.

In response to public comments, we clarified the requirements for affected sources also subject to the new source performance standard (NSPS) for petroleum refineries (40 CFR part 60, subpart J) and added new compliance options. If your affected source is also subject to the NSPS, complying with the NSPS emission limitations also allows you to comply with this rule. If your affected source isn't subject to the NSPS, you can elect to comply with the NSPS emission limitations in order to be in compliance with this rule.

As further discussed in section IV.B of this document, we also added a second Ni limit as another metal HAP compliance option for CCU. This alternative provides an emission limit formatted to account for the variable characteristics of these units. We added it to the rule both to credit and encourage hydrotreating of the CCU feed as a means of reducing metal HAP emissions to the atmosphere.

We also made a change to the TOC emission limit for catalytic reforming units in § 63.1562(b)(1)(iii) of the proposed rule. This provision exempted emissions during depressuring and purging operations if the reactor vent pressure or differential pressure between the reactor vent and the gas transfer system to the control device were under 1 pound per square inch gauge (psig). Since 5 psig is the limit in States with facilities representing the MACT floor, we revised this provision to state that the emission limitations do not apply to depressuring and purging when the reactor vent pressure is 5 psig or less.

The final rule also includes specific operating limits for monitored process or control device operating parameters. Operating limits also may apply if you choose to comply with certain options, such as the alternative Ni emission limitations for CCU.

Tables 1, 2, 8, and 9 to the final rule (subpart UUU) show the final emission limitations for CCU. Tables 15, 16, 22, and 23 to subpart UUU give the emission limitations for catalytic reforming units. The final emission limitations for sulfur recovery units are in Tables 29 and 30 to subpart UUU.

The final rule also includes work practice standards for HAP emissions from by-pass lines. A work practice standard may include a design, equipment, work practice, or operational requirement. Table 36 to subpart UUU lists the four options provided under the final rule. The final rule also includes work practice standards for all affected sources. These standards require you to prepare an operation, maintenance, and monitoring plan according to the rule requirements and comply with the procedures in the plan. This plan must be consistent with good air pollution control practices for minimizing emissions.

E. How Do I Demonstrate Initial Compliance?

You must install and operate the required continuous monitoring systems and show that you meet each emission limitation or work practice standard that applies to you. The requirements for demonstrating initial compliance differ by unit type and according to whether or not your affected source is also subject to the NSPS requirements.

If your CCU or sulfur recovery unit is also subject to the NSPS, you must meet the applicable emission limitations and monitoring requirements in this rule. These requirements in this case are the same as the NSPS. If you have already

done a performance test to demonstrate initial compliance with the NSPS, you aren't required to do another test to demonstrate initial compliance with the limits in this rule. If you have already done a performance test, you aren't required to do another one to show that your continuous opacity and emission monitoring systems meet the applicable performance specifications. You can demonstrate initial compliance for these affected sources by submitting a written statement in your Notification of Compliance Status certifying that you comply with the applicable NSPS requirements.

We have revised the requirements for affected sources not subject to the NSPS to account for the new compliance options, as well as revisions to monitoring requirements. Your requirements for demonstrating initial compliance will vary according to the compliance option you elect and the type of continuous monitoring system you must use.

1. HAP Metal Emissions From CCU

If you elect to comply with the NSPS, you must install and operate a continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent. The final rule also requires a continuous opacity monitoring system if your CCU has a fresh feed capacity of 20,000 barrels per day (or more) and uses an add-on control device other than a wet scrubber (e.g., an electrostatic precipitator) to control the catalyst regenerator vent emissions. You also must install and operate a continuous opacity monitoring system if your CCU isn't equipped with an add-on control device. If you use a continuous opacity monitoring system and elect to comply with either of the Ni limits, you also must install and operate a continuous parameter monitoring system to measure and record the gas flow rate. Or, you can use the approved alternative procedure in the final rule to determine the gas flow rate.

For a smaller CCU (fresh feed capacity 20,000 barrels per day or less) that uses an electrostatic precipitator to control emissions from the catalyst regenerator vent, you can use a continuous opacity monitoring system (with a continuous monitoring parameter system for gas flow rate if you elect either of the Ni options) or continuous parameter monitoring systems. The continuous parameter monitoring systems must measure and record the gas flow rate as well as the voltage and secondary current (or total power input).

If you use a wet scrubber to control emissions from your catalyst regenerator vent, you must use continuous parameter monitoring systems to measure and record the pressure drop across the scrubber, the gas flow rate, and the total liquid (or scrubbing liquor) flow rate, regardless of unit capacity. In response to comments, we exempted non-Venturi wet scrubbers of the jet-ejector design from monitoring requirements and operating limits for pressure drop.

Section 63.1573 of the final rule provides approved alternative monitoring procedures. If applicable, you can use these alternative procedures to determine the gas flow rate rather than a continuous parameter monitoring system.

You must prepare a site-specific test plan and do a performance test to demonstrate initial compliance with the applicable emission limitation(s). If you use a continuous opacity monitoring system and elect to meet the NSPS, you also must do a site-specific performance evaluation test plan and performance evaluation to show that your monitoring system meets the applicable performance specification.

If you use a continuous opacity monitoring system and elect the PM limit, you must use the performance test results to establish a site-specific opacity operating limit. If you elect either Ni limit, you must use the performance test results to establish a site-specific Ni operating limit based on opacity, gas flow rate, equilibrium catalyst Ni concentration, and coke burn-rate (depending on the format of the option you elect). You can use EPA Method 6010b, 6020, 7520, or 7521 in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, Revision 5 (April 1998) or an alternative method satisfactory to the Administrator to analyze the equilibrium catalyst Ni concentration. The final rule includes procedures for establishing each type of operating limit.

If you use continuous parameter monitoring systems for an electrostatic precipitator and elect the PM emission limitation, you must use the performance test results to establish operating limits for gas flow rate and voltage and secondary current (or total power input). If you elect either of the Ni limits, you must establish operating limits for the equilibrium catalyst Ni concentration. If you use a wet scrubber, you must use the performance test results to establish operating limits for pressure drop and liquid-to-gas ratio (if you elect the PM limit) as well as equilibrium catalyst Ni concentration (if you elect either of the Ni limits).

Table 3 to subpart UUU shows the requirements for continuous monitoring systems for HAP metal emissions from CCU. Table 4 to subpart UUU shows the performance test requirements under each of the four compliance options. You have demonstrated initial compliance with the metal HAP emission limitations if you meet the conditions in Table 5 to subpart UUU.

2. Organic HAP Emissions From CCU

Table 10 to subpart UUU shows the requirements for continuous monitoring systems for organic HAP emissions from CCU. If you elect to comply with the NSPS requirements, you must install and operate a continuous emission monitoring system to measure and record the concentration by volume (dry basis) of CO emissions from each catalyst regenerator vent.

If you don't elect to comply with the NSPS requirements, you must use continuous parameter monitoring systems. In response to comments, we have revised the proposed requirements for thermal incinerators to include a continuous parameter monitoring system to measure and record the oxygen content (percent dry basis) in the incinerator vent stream as well as the combustion zone temperature. If your unit is not equipped with a combustion control device, the final rule requires that you use a continuous emission monitoring system. Like the NSPS, if you can demonstrate that emissions from your vent average 50 ppm or less, the final rule does not require a continuous emission monitoring system or a continuous parameter monitoring system.

To demonstrate initial compliance, you must prepare a site-specific test plan and do a performance test to show that your vent meets the emission limit. If you use a continuous emission monitoring system and elect to comply with the NSPS, you also must prepare a site-specific performance evaluation test plan and do a performance evaluation to show that your system meets the applicable performance specification.

If you use continuous parameter monitoring systems, you must use the test results to establish operating limits for combustion zone temperature and oxygen concentration in the vent stream. We also clarified the performance test provisions for flares, which require a visible emissions test by Method 22 with a 2-hour observation period.

Table 11 to subpart UUU shows the performance test requirements for organic HAP emissions. You have demonstrated initial compliance with

the organic HAP emission limits if you meet the conditions in Table 12 to subpart UUU.

3. Organic HAP Emissions From Catalytic Reforming Units

Table 17 to subpart UUU shows the continuous monitoring system requirements for organic HAP emissions from catalytic reforming units. We didn't revise the proposed requirements for continuous monitoring systems for these units.

To demonstrate initial compliance, you must prepare a site-specific test plan and do a performance test to show that your vent meets the applicable emission limitation. We revised the proposed performance test procedures to remove Method 18 (40 CFR part 60, appendix A) for measurement of TOC concentration. You can use Method 25 or 25A for TOC concentration. We also clarified the requirements for flares (see section II.E of this document). Using the performance test results, you must establish operating limits for the combustion zone temperature of your combustion control device. Table 18 to subpart UUU shows the performance test requirements. You have demonstrated initial compliance with the emission limitations if you meet the conditions in Table 19 to subpart UUU.

4. Inorganic HAP Emissions From Catalytic Reforming Units

Table 24 to subpart UUU shows the continuous monitoring system requirements for inorganic HAP emissions from catalytic reforming units. We revised the proposed requirements for wet scrubbers to include a continuous parameter monitoring system to measure and record the pH of the water (or scrubbing liquid) exiting the scrubber instead of a continuous parameter monitoring system for pressure drop. You can also use the approved monitoring alternative for pH strips in lieu of a continuous parameter monitoring system. We also revised the proposed rule to include requirements for units with an internal scrubbing system (i.e., no add-on control device) based on use of colormetric tube sampling systems.

Table 25 to subpart UUU shows the performance test requirements for inorganic HAP emissions from catalytic reforming units. You must prepare a site-specific test plan and do a performance test to show that you meet the applicable emission limitation. We revised the proposed performance test requirements to specify that you can't make any test runs during the first hour or the last 6 hours of the cycle for a semi-regenerative or cyclic regeneration unit. Using the results of the performance test, you must establish operating limits for the liquid-to-gas ratio and pH of the scrubber water (or scrubbing liquid). If you don't use a control device, you must establish an operating limit for the HCl concentration using colormetric tubes. You can use Method 26 in 40 CFR part 60, appendix B, to measure emissions from these units. You have achieved initial compliance with the inorganic HAP emission standards if you meet the conditions in Table 26 to subpart UUU.

5. Organic HAP Emissions From Sulfur Recovery Units

Table 31 to subpart UUU shows the continuous monitoring system requirements for organic HAP emissions from sulfur recovery units. If you elect to comply with the NSPS requirements, you must install and operate a continuous emission monitoring system to measure and record the concentration (dry basis, zero percent excess air) of SO2 emissions exiting each exhaust stack for the unit if you use an oxidation or reduction control system followed by incineration. If you use a reduction control system without incineration, you must use continuous emission monitoring systems to measure and record the concentration of reduced sulfur and oxygen emissions. If you elect to comply with the TRS limit and use an incinerator to control emissions from your vent, you must install and operate a continuous emission monitoring system or a continuous parameter monitoring system to measure and record the combustion zone temperature and the oxygen content (percent, dry basis) in the vent stream of the incinerator. If you do not use an add-on control device to control emissions from your vent, you must install and operate a continuous emission monitoring system to measure and record the concentration of TRS.

You must prepare a site-specific test plan and do a performance test to show that emissions from your vent meet the applicable standard. If you use a continuous emission monitoring system and elect to meet the NSPS, you also must do a site-specific performance evaluation test plan and a performance evaluation to show that your system meets the applicable performance specification. If you use continuous parameter monitoring systems, you must establish operating limits for oxygen concentration as well as for combustion zone temperature. Table 32 to subpart UUU shows the performance test requirements for each option. You have demonstrated initial compliance if you meet the conditions specified in Table 33 to subpart UUU.

6. HAP Emissions From Bypass Lines

We revised the proposed standards for by-pass lines to include two new equipment options suggested by commenters. Table 37 to subpart UUU shows the performance test requirement applicable to a flow indicator, level recorder, or electronic valve position monitor. You have achieved initial compliance if you meet the applicable conditions for the work practice option you select shown in Table 38 to subpart UUU.

7. Continuous Monitoring System Requirements

We added new sections (§§ 63.1572 and 63.1573) to the final rule to clearly identify the requirements for monitor installation and operation and monitoring alternatives. Table 40 to subpart UUU shows the requirements for continuous opacity monitoring systems and continuous emission monitoring systems, which are the same as the NSPS. Table 41 to subpart UUU shows the requirements for installation and operation of continuous parameter monitoring systems. We have revised these requirements to include more detailed requirements for inspections and calibration checks as well as performance specifications for some types of systems. We also revised the rule to clarify that each continuous parameter monitoring system must measure and record on an hourly or hourly average basis and determine and record the daily average value.

The final rule also specifies that you operate your monitors (or collect data at all required intervals) at all times the affected source is operating. This does not apply to monitoring malfunctions, associated repairs, required quality assurance or control activities, and preapproved planned maintenance activities. You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations or to meet a minimum data availability requirement.

8. Performance Tests, Performance Evaluations, and Engineering Assessments

Section 63.1571 of the final rule contains general information and criteria you must meet for these activities. We have clarified the rule to specify that you can do your performance test at any time from today's date to your compliance date. In response to comments, we revised

§ 63.1564(e) of the proposed rule to require that the tests be done under normal operating conditions rather than at ''maximum representative operating capacity for the process.'' You must base your process or control device operating limits on the performance test measurements. However, unless you elect one of the two Ni options for metal HAP emissions from CCU, you can adjust the measured values, if necessary, using control device design specifications, manufacturer recommendations, or other applicable data. You must document any adjustment to the satisfaction of your permitting authority. We added special provisions to the rule for adjusting the Ni-related values.

This section of the rule also covers how to change your operating limit. While you can change your site-specific opacity operating limit or Ni operating limit only by doing a new performance test, you can change other operating limits for continuous parameter monitoring systems by doing another performance test, a performance test in conjunction with an engineering assessment, or by an engineering assessment. You must establish a revised limit if you make any change in the process or operating conditions that could affect control system performance or if you change the designated conditions after the last performance or compliance tests were done.

F. How Do I Demonstrate Continuous Compliance?

A new section, § 63.1570, of the final rule states your general requirements for complying with this rule. You must be in compliance with all of the non-opacity emission limits during the times specified in § 63.6(g)(1). You must be in compliance with the opacity emission limits during the times specified in § 63.6(h)(1). You must always operate and maintain your affected source, including air pollution and control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

Subpart UUU requires that you develop and implement a startup, shutdown, and malfunction plan according to the requirements in § 63.6(e)(3). During periods of startup, shutdown, or malfunction, you must operate your affected source and control equipment according to your plan.

You must report each instance in which you did not meet each emission limitation or work practice standard that applies to you. This includes periods of startup, shutdown, and malfunction. These instances are deviations from the emission limitations and work practice standards that must be reported according the requirements in § 63.1575 of the final rule.

Consistent with §§ 63.6(e) and 63.7(e)(1), a deviation that occurs during a period of startup, shutdown, or malfunction is not a violation if you demonstrate to the Administrator's satisfaction that you were operating in accordance with your startup, shutdown, and malfunction plan. The Administrator will determine whether a deviation that occurs during a period of startup, shutdown, or malfunction is a violation according to the provisions in § 63.6(e). As proposed, multiple deviations from the same control device at the same time when you monitor process or control device operating parameters are a single deviation. You still must report each deviation.

You must demonstrate continuous compliance with each emission limitation and work practice standard that applies to you. To demonstrate continuous compliance with the emission limitations for CCU, you must meet each of the conditions specified in Tables 6 and 7 to subpart UUU (for metal HAP emissions) and Tables 13 and 14 to subpart UUU (for organic HAP emissions). For catalytic reforming units, you must meet each of the conditions in Tables 20 and 21 to subpart UUU (for organic HAP emissions) and Tables 27 and 28 to subpart UUU (for inorganic HAP emissions). For HAP emissions from sulfur recovery units, you must meet each of the conditions in Tables 34 and 35 to subpart UUU. Continuous compliance requirements for by-pass lines are in Table 39 to subpart UUU. We have revised the continuous compliance requirements to reflect the inclusion of new compliance options and monitoring requirements.

G. What Are the Notification, Recordkeeping, and Reporting Requirements?

Sections 63.1574 through 63.1576 of the final rule describe the requirements for notices, reports, and records. As proposed, you may be required to provide up to seven types of one-time notifications of applicability, intention to construct or reconstruct (including construction and startup dates), performance test dates, and compliance status.

We added a one-time notice for owner and operators to obtain an extension of compliance on the emission limitations for an existing CCU. To obtain the extension, the owner or operator must commit to adding hydrotreatment of the CCU feedstock to meet the final Tier 2 gasoline sulfur control standards (40 CFR part 80, subpart J).

We have streamlined the data requirements for the Notification of Compliance Status by removing certain information on operation, maintenance, and monitoring of affected sources and control systems. This information is to be included in a separate operation, maintenance, and monitoring plan submitted to your permitting authority for review and approval. The plan must cover each affected source, monitoring system or procedure, and control device or method. This plan also contains information such as the procedures you will use to monitor certain process or control device operating parameters, your quality assurance/quality control plan for continuous monitoring systems, and monitoring and maintenance schedules.

You must submit a semiannual compliance report containing the information specified in the rule. We revised the rule to require that you submit the report whether or not a deviation occurred during the reporting period. However, only summary information is required if no deviation occurred. As proposed, the rule does not require that you make emergency reports if actions taken are consistent with your startup, shutdown, and malfunction plan. If actions taken are not consistent with your plan, you must report the events and the response in your semiannual compliance report.

We also revised the proposed rule in response to comments to include provisions allowing the permitting authority to approve a period of planned routine maintenance for a refinery with multiple CCU served by a single wet scrubber emission control device. During this pre-approved time period, the refinery may take the control device and/or one of the process units out of service for maintenance while the remaining process unit(s) continues to operate. To obtain approval, you must submit a written request at least 6 months before the planned maintenance is scheduled to begin that contains the specified information and data. This includes:

- A description of the planned routine maintenance and why it is necessary;
- The date the maintenance will begin and end;
- A quantified estimate of the emissions (including HAP and criteria pollutants) that would be released with an analysis of the environmental benefits (i.e., emission reduction) that would result as opposed to delaying the maintenance until the next unit turnaround; and
- Actions to be taken to minimize emissions during the period.

You must include a copy of the request in the compliance report due for the period before the planned maintenance is scheduled to begin. In the compliance report due after the routine planned maintenance is complete, you must provide followup information on the maintenance including the number of hours the control device did not operate.

As proposed, you must keep records of the information and data required by § 63.10. This includes information and data you must record to show continuous compliance with the emission limitations and work practice standards. You also must keep records of any changes that affect the performance of your emission control system.

III. Summary of Environmental, Energy, and Economic Impacts

In response to comments, we revised the environmental impacts analysis in two major respects. First, we incorporated the most current (1998) facility-specific data available. We removed thermal (non-fluid) CCU from the analysis because these units are not subject to the final rule. Finally, we changed the HAP metal emission estimate methodology to allow more site-specific and unit-specific estimates based on equilibrium catalyst Ni concentrations. The revised environmental impacts analysis is available in the docket (Docket A–97–37).

A. What Are the Air Quality Impacts?

We estimate nationwide HAP emissions from process vents on CCU, catalytic reforming units, and sulfur recovery units at 12,700 tpy at the current level of control. Most of the 162 existing refineries will meet the requirements of the rule within 3 years for all affected sources. A small number of fluid CCU may be granted an extension of compliance to install hydrotreating unit(s). When this rule is fully implemented for all affected sources, nationwide HAP emissions will be reduced by about 11,000 tpy, an 87 percent reduction. Emissions of non-HAP such as VOC, CO, PM, and hydrogen sulfide will be reduced by about 55 percent from the current level of about 109,000 tpy. Little or no adverse secondary air impacts, water, or solid waste impacts are anticipated from the implementation of these standards.

B. What Are the Cost Impacts?

For most facilities, the costs of the rule will be incurred over the next 3 years. For a few facilities, the costs for fluid CCU will be incurred over the next 8 years as hydrotreatment units are installed to meet the requirements of Tier 2 and this rule. The nationwide capital and annualized costs of control equipment (1998 dollars) are estimated at $163 million and $37.2 million/yr, respectively. When fully implemented, this rule is expected to result in an overall annual national cost of $47.3 million. This includes a cost of $37.2 million for operation and maintenance of control devices and a monitoring, recordkeeping, and reporting cost of $10.1 million ($9.2 million for operation and maintenance of monitoring systems and $0.9 million for recordkeeping and reporting).

About 75 percent of the facilities are currently meeting at least one of the emission limits required under the final rule. The costs for this rule are for the small fraction of refineries not already meeting the standard. Based on our cost analysis, only 29 of the 124 CCU (23 percent) and 53 of the 185 sulfur recovery units (29 percent) will require new or upgraded controls. We estimate that 102 of the 177 catalytic reforming units will require new or upgraded control systems for HCl.

C. What Are the Economic Impacts?

The economic analysis for the proposed rule showed that the estimated price increase of refined petroleum products is 0.24 percent for refineries expected to incur compliance costs as a result of the rule. The estimated decrease in output is 0.17 percent of domestic refinery products. The decline in domestic production is due to higher imports and reduced quantity demanded due to higher prices. However, the value of domestic shipments is expected to increase by 0.07 percent because the estimated price increase more than offsets the lower production volume. Annual net exports (exports minus imports) are predicted to decrease by 0.76 percent. Employment in the industry is likely to decrease by 0.19 percent (136 jobs). No plant closures or significant regional impacts are expected. The impacts for the final rule are expected to be similar to those predicted for the proposed rule since the overall costs and number of affected facilities changed only slightly; both overall capital and annual costs and number of affected sources are estimated to be lower for the final rule. Therefore, a new economic analysis was not considered necessary and was not conducted for the final rule. For more information on the economic impact analysis methodology and results, consult the ''Economic Impact Analysis for the Petroleum Refinery NESHAP'' (Docket A–97–37).

D. What Are the Non-Air Health and Environmental Impacts?

The control requirements in this rule are based on air pollution control systems currently in widespread use throughout the petroleum refining industry. The reduction in emissions of HAP and criteria pollutants will result in reduced deposition to waterbodies. The reduction in VOC will reduce ozone formation resulting in less damage to agricultural crops and forests. A small increase in annual water usage, about 6.2 million gallons nationwide, will result from the increased use of wet scrubbers.

E. What Are the Energy Impacts?

The energy impacts also are about the same as the proposed rule. Once fully implemented, annual electric usage is expected to increase by about 67,000 megawatt-hours (MW-hrs), primarily for CCU and sulfur recovery unit control systems. National natural gas usage, primarily for sulfur recovery unit control systems, is expected to increase by about 1.5 billion cubic feet per year.

IV. Summary of Major Comments and Responses

A. Why Did We Extend the Compliance Date?

Comment: Several industry commenters urge us to defer or delay promulgation of the rule to allow time to coordinate with the Tier 2 gasoline sulfur control requirements and other rules such as the reformulated gasoline (RFG) Phase II standard and the revised national ambient air quality standard for PM. Their major concern is that plants will be required to install expensive controls that may be extraneous as soon as they are installed depending on the outcome of the Tier 2 and other rules.

Response: To comply with the Tier 2 gasoline sulfur control requirements, individual refineries ultimately will need to produce gasoline with an average sulfur content of 30 ppm. The majority of refineries will need to undertake major construction projects to meet this limit. Since these projects could require modification of CCU and other affected sources, we revised the schedule to delay promulgation of this rule until completion of the Tier 2, which was promulgated on February 10, 2000 (65 FR 6698).

For some refineries, the Tier 2 rule significantly impacts its CCU. These refineries will have construction projects adding hydrotreating of the feed to the CCU. For these refineries, we also extended the compliance date to allow more time for construction projects. We believe that this will encourage refinery

owners and operators to employ hydrotreating of the feedstock to comply with the Tier 2 rule. As discussed in more detail below, we believe that hydrotreating the feedstock has increased environmental benefits relative to other methods of reducing gasoline sulfur.

The extended compliance date for existing CCU is based on when and how a refinery produces low sulfur gasoline to meet the Tier 2 limit. Hydrotreating the feed to the CCU is one of the means of producing low sulfur gasoline. As discussed further below, hydrotreating the feedstock provides environmental benefits not realized with other methods of producing low sulfur gasoline. It is also, unfortunately, significantly more expensive than other methods of reducing the sulfur content of gasoline.

A refinery owner or operator must determine which technology to use in reducing gasoline sulfur to meet the fuel standards. A number of alternatives are available. Refineries may elect to hydrotreat after the CCU, to hydrotreat the CCU feedstock or to implement some other form of desulfurization technology. Hydrotreating the feedstock removes metals as well as sulfur. While hydrotreating the feedstock to the unit would allow greater flexibility within the overall refinery operations and would better position the refinery for any additional sulfur fuel standards that might be promulgated in the future, such as standards to reduce sulfur in diesel fuel (64 FR 26142, May 13, 1999), the cost of hydrotreating the CCU feed is considerably more than post-unit hydrotreating for desulfurization. Thus, despite the greater flexibility realized through hydrotreating the feedstock, there is an economic bias against its use to reduce gasoline sulfur to meet the fuel standards. We believe that this bias could increase substantially if we do not coordinate the compliance dates for these NESHAP and the Tier 2 rule. A substantial increase in the economic bias against hydrotreating the feedstock would likely result in less refineries implementing this method of reducing gasoline sulfur, thereby foregoing a potentially significant environmental benefit.

Some facilities will take longer than 3 years to comply with the Tier 2 standards. Should these facilities elect to install hydrotreatment units for the feed to the CCU, these new units will not be operating at the compliance date for the MACT standard, 3 years promulgation. To avoid non-compliance, an owner or operator would be required to install expensive PM controls to comply with the MACT standard. These new controls might then become redundant with the later startup of the hydrotreatment unit for the feed to the CCU. Therefore, if the owner or operator elects to install a hydrotreatment unit for the feed to the CCU, the MACT compliance date for the CCU becomes the same as the Tier 2 compliance date.

Linking the compliance dates for the two rules, in this particular instance for those refineries that elect to hydrotreat the CCU feedstock, will allow the refinery to coordinate both decision making and the actual construction projects and, thus, minimize disruption to the refinery operations. We believe that not linking the compliance dates for the two rules could result in an environmental benefit being foregone and that linking them will result in a net environmental benefit because the number of process unit shutdowns and startups would be minimized. Shutdowns and startups can result in considerably more emissions to the atmosphere than operations under normal conditions. An estimate of the emissions reductions that would result from linking the compliance dates for the CCU MACT standards and Tier 2 fuel standards is not possible at this time. This is because we lack information regarding how the refineries will choose to comply with the fuel standards and the uncertainties associated with startup and shutdown of these refinery operations.

Linking the MACT standards' compliance date to the Tier 2 fuel standards' compliance date (i.e., the date the refinery produces low sulfur gasoline at 30 ppm) will not result in an overall or complete delay of the MACT standards for all CCU. While we believe that linking the compliance dates will serve as an incentive to hydrotreat the CCU feedstock, we nevertheless expect that the majority of facilities will comply with the fuel standards without implementing CCU feedstock hydrotreating. In some cases, even those that elect to hydrotreat the feedstock will comply in 3 years or less to take advantage of the various pooling, averaging, banking, and trading options provided in the final Tier 2 standards. The remainder of refineries will begin production of low sulfur gasoline over the next 8-year period, although most are expected to be in full compliance (i.e., producing gasoline at the 30 ppm annual average) by the year 2006. In no case will refineries be allowed any later than December 31, 2009, to comply with the MACT standard for CCU, which corresponds to the final Tier 2 compliance date.

B. What Is the New Alternative Nickel Emission Limitation?

Comment: Several industry commenters urge us to include a rate-based Ni alternative of 0.007 lb Ni/1,000 lbs of coke burn-off in the final rule. According to the commenters, this approach avoids penalizing large units with low HAP emissions and equates to the NSPS for PM by using the highest or worst case Ni equilibrium concentration to convert PM to Ni. Most of the units that can comply with the PM limit cannot comply with the mass-based Ni limit due to their greater size. The commenters argue that larger units should not be subject to a more restrictive Ni limit than smaller units due to their greater processing capacity.

Environmental groups and one independent technical expert strongly disagree that we should provide the second Ni alternative at the level suggested by industry (i.e., 0.007 lb/1,000 lbs of coke burn-off). Commenters claim that this alternative is not technically equivalent to the MACT floor, is not protective of the environment as it is set at a level that allows all refiners to process heavy feeds with no control device, will actually increase emissions, and poses difficulties in ensuring continuous compliance.

Response: After careful review of all the information and data collected following proposal and received as part of the public comments, we decided to include an additional metal HAP alternative for CCU formatted in terms of Ni emissions per 1,000 lbs of coke burn-off. We concluded that this particular format (i.e., lb Ni/1,000 lbs of coke burn-off) does account for the wide variation of processing capacity within the industry and, with the new provisions added to the final rule, there are adequate means of ensuring continuous compliance.

We also concluded that the technical approach recommended by the industry commenters (using equilibrium catalyst Ni concentration to make a direct conversion of the PM emission standard to a Ni limit) is not appropriate. As discussed further in the Response to Comment Document, we must reject any method to derive a Ni emission limit in terms of lb Ni/1,000 lb coke burn-off based on the PM emission limit and some arbitrarily selected equilibrium catalyst concentration, whether it is a median, average or highest measured value. The emission limits calculated using these approaches do not correlate with actual emissions (in lb Ni/1,000 lbs coke burn-off) of any CCU, and the resulting Ni emission limits are not

''equivalent'' to the technology-based standard used as a basis of the PM emission limit that characterizes performance of the MACT floor technologies. This is because the equilibrium catalyst Ni concentration in no way reflects the performance of the MACT floor technology, as PM emissions. The equilibrium catalyst Ni concentration of a CCU is dependent on a complex mixture of operating and economic considerations; it is not totally dictated by the variability of Ni in the crude oil or the unit feed. In addition, we have no data or information to relate the equilibrium catalyst metals concentration to the best performing facilities (i.e., the equilibrium catalyst metal concentration does not reflect or relate to control device performance).

Although we do not accept the recommended approach in determining the emission limit based on an equilibrium catalyst conversion factor, we feel that the alternative format in terms of lb Ni/1,000 lb of coke burn-off has considerable merit. This particular format allows for flexible compliance on the part of the plant owner/operator. An emission limit expressed in this format can be met by using front-end hydrotreating, in-process operational changes, or end of pipe add-on controls alone or in combination.

In addition, to comply with the Tier 2 fuel standards, an owner or operator must choose one of a number of available methods of reducing sulfur in gasoline. One of those methods is to hydrotreat CCU feedstocks. This method of compliance has environmental benefits not realized with other methods. This is because feedstock hydrotreating has the potential to reduce Ni emissions from CCU, depending on what operating changes are made in the catalyst regeneration processes in conjunction with the feedstock hydrotreating. We believe that a Ni emission limit, in terms of lb Ni/1,000 lbs coke burn-off, has a potential to encourage feedstock hydrotreating as a means to comply with this limit and the Tier 2 fuel standards.

To determine an appropriate emission limit, we examined the available emissions data for the top performing CCU in terms of lb Ni emissions/1,000 lb coke burn-off rate. Although the currently available source test data are somewhat limited and are generally assumed to be representative of the lowest Ni emitters across the industry, they do allow an analysis following the basic criteria established for a MACT floor determination.

Through review of the emission data, we found that the average emission rates, as well as each individual test run result for the top-ranked CCU, are all below 0.001 lb Ni/1,000 lbs coke burn-off. Based on our data analysis, we determined that the emission limit of 0.001 lb Ni/1,000 lbs coke burn-off adequately characterizes performance of the MACT floor technology while taking into account process and measurement variability. This analysis provides an emission limit in the alternative format (Ni emissions per unit coke burn) that is reflective of the MACT floor technology. This emission limit is included in the final rule as an alternative format to the PM or Ni lb/hr limits that were also selected to characterize the performance of the MACT floor technologies. The determination of the emission limit formatted in terms of coke burn-off that is used to characterize the MACT floor technology is discussed in more detail in the Response to Comments Document (Docket A–97–36).

C. Why Did We Not Change the Proposed Nickel Emission Limitation?

Comment: Three commenters believe we should relax the proposed Ni emission limitation (lbs/hr) for metal HAP emissions from CCU. They question the method we used to determine the numerical emission limit that characterizes the MACT floor technology in this particular format. According to the commenters, our variability analysis is flawed for several reasons.

- We used the z-statistic rather than the student's t-statistic, which is appropriate for small samples from populations.
- We used the average relative standard deviation instead of the more representative maximum relative standard deviation.
- The analysis includes data known to be false or problematic.
- We used the 95 percent confidence level rather than the 98 percent interval, which the commenter claims is an EPA precedent.

The commenters also believe the level of emissions that would be excluded by the higher limit is trivial and of little environmental significance. Raising the limit would allow some refineries to avoid installing controls that are not cost effective and provide real *de minimus* relief. The commenters support a standard of 760 lbs/yr based on their approach.

Response: We acknowledge the quality assurance concerns regarding the results of certain Ni emission measurements and the use of larger confidence intervals about the average emission value in setting an emission limit that reflects use of the MACT floor technology. However, we also believe that the analysis must use the average of the top 12 percent or the 6th percentile facility, rather than the emissions of the 12th percentile facility. There are 124 fluid CCU in the U.S. and its territories; the 6th percentile of the industry would be represented by the emissions reductions achieved by the 7th and 8th ranked units. Reanalysis of the data, considering the reviewer's comments on the statistical approach while using the 6th percentile unit, yields an emission limit nearly identical to the proposed limit.

In response to this comment, we examined the emission rates of the top performing unit for which we have documented source test results. We found that the average emission rates, as well as each individual test run result for the top eight ranked units, are all below 200 lbs/yr. The 9th and 10th ranked units have similar average emission rates, but a wider fluctuation in the individual test run results. From the test data available, we determined that the proposed emission limit of 250 lbs/yr adequately characterizes the performance of the MACT floor technologies while taking into account process variability. For these reasons, we made no change in the proposed Ni lb/hr emission limit.

D. How Did We Change the Proposed Monitoring Requirements?

Comment: Environmental groups urge us to require continuous emission monitoring systems for HCl, TRS, and either CO, TOC, or total hydrocarbons (THC) for existing and new affected sources. They say these systems are commercially available, feasible (as stated in the background information document), ensure standards are met at all times, and provide better HAP monitoring. They say the cost of these systems is decreasing, and they may no longer be too costly. Also, the continuous monitoring of a process allows the operator greater flexibility in operation which could result in increased output, improved efficiency, and overall cost savings. Two commenters specifically request continuous emission monitoring systems for TRS limits. Due to the TRS emissions from refineries and numerous exceedances, more accurate information than operating parameter values is needed to assess compliance.

Response: We agree with the commenters' recommendations that the NSPS experience with continuous emission monitoring systems demonstrates their technical and economic feasibility for this industry,

provides better data, and needs to be encouraged.

In determining monitoring requirements, we looked at the various options. One of the options examined was requiring continuous emission or opacity monitors for all affected sources under this rule. We did not select this option because of the high capital and operating costs.

However, in response to these comments, we reexamined these options to look for ways to encourage their use or require their use if needed. As a result, we included options in the rule allowing plants to choose to comply with the NSPS monitoring requirements.

We also included requirements in the rule for continuous opacity monitoring systems for catalyst regenerator vents on any CCU with a fresh feed capacity greater than 20,000 barrels per day (and not using wet scrubbers). We also added continuous opacity monitors as a monitoring option for smaller units. Continuous opacity monitoring systems are already required for the larger units under Federal/State implementation plan requirements in 40 CFR part 51, appendix P; therefore, these costs are not attributable to the standard. We did not require a continuous opacity monitoring system for a unit with a wet scrubber because of interference from water vapor in wet scrubber exhaust gases. For these units, parameter monitoring is still the only monitoring method.

A continuous emission monitoring system for TRS or reduced sulfur emissions is also required in the final rule for any sulfur recovery unit with no add-on control device. The cost of continuous emission monitoring systems for these units is reasonable and does not pose any economic hardship for plants that do not use a control device. For units with add-on control devices, we are confident that the process or control device parameter monitoring allowed in place of continuous emission or opacity monitoring systems provides adequate assurance of continuous compliance.

V. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 5173, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a ''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 entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

B. 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. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the EPA consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

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

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant,'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

This final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866. The EPA interprets Executive Order 13045 as applying only to

regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. These final NESHAP are not subject to Executive Order 13045 because they are based on technology performance and not on health or safety risks.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

F. Unfunded Mandates Reform Act of 1995

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, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the 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 the 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 the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector in any 1 year. The rule does not significantly or uniquely impact small governments because it contains no requirements that apply to such governments or impose obligations upon them. Thus, the requirements of the UMRA do not apply to this rule.

G. 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 EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. For the purposes of assessing the impacts of today's rule on small entities, small entities are defined as: (1) A firm having no more than 1,500 employees and no more than 75,000 barrels per day capacity of petroleum-based inputs, including crude oil or bona fide feedstocks; [1] according to Small Business Administration (SBA) size standards established under the North American Industry Classification System (NAICS); (2) a small government 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. Small entities in NAICS 32411 only will be affected.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. We have determined that nine of the 23 small refiners own one or more of the affected sources. None of the 9 small refiners will need additional air pollution control equipment for CCU or sulfur recovery units. Only those costs for monitoring, reporting, and recordkeeping would be incurred by these firms. Six small refiners will need to add control equipment for catalytic reforming units. Annual total compliance costs for the nine affected small refiners would be less than 0.01 percent of estimated revenues. For more information, please consult the public docket for this final rule.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. As discussed in the preamble to the proposed rule, EPA met with representatives of five small refineries and listened to their concerns. In response, we exercised the maximum degree of flexibility in minimizing impacts on small business through the alternative Nickel standard and subcategorization for catalytic reforming units. The rule reflects the minimum level of control allowed under the CAA. Since proposal, we have further reduced the economic impact on all refineries, including small businesses, by subcategorizing CCU and, in appropriate circumstances, extending the compliance date to coincide with the Tier 2 gasoline sulfur control rule.

H. Paperwork Reduction Act

The information collection requirements in this final rule are being submitted for approval to OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection request (ICR) document has been prepared by EPA (ICR No. 1844.01), and a copy may be obtained from Sandy Farmer, Office of Environmental Information, Collection Strategies Division, U.S. Environmental Protection Agency (2137), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or by calling (202) 260–2740.

The information collection requirements in the final rule include mandatory notifications, records, and reports required by the NESHAP General Provisions (40 CFR part 63, subpart A). These information requirements are needed to confirm the compliance status of major sources, to identify any non-major sources not subject to the standard and any new or reconstructed sources subject to the standards, to confirm that emission control devices are being properly operated and maintained, and to ensure that the standards are being achieved. Based on the recorded and reported information, EPA can decide which facilities, records, or processes should be inspected. These recordkeeping and reporting requirements are specifically authorized under section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA for which a claim of

[1] Capacity includes owned or leased facilities as well as facilities under a processing agreement or an agreement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

confidentiality is made will be safeguarded according to EPA policies in 40 CFR part 2, subpart B.

The annual public reporting and recordkeeping burden for this collection of information (averaged over the first 3 years after the effective date of this rule) is estimated to total 19,428 labor hours per year at a total annual cost of $1.3 million. This estimate includes initial notifications, a performance test, one-time preparation of a startup, shutdown, and malfunction plan and operation, maintenance, and monitoring plan, semiannual deviation summary reports, and recordkeeping for 132 plants expected to be subject to the rule during this ICR clearance period. Total capital costs associated with the monitoring equipment over the 3-year period of the ICR is estimated at $15.8 million; the annualized cost of capital is estimated at $1.1 million. This estimate includes the capital and startup costs associated with installation of monitoring equipment.

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 number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTTA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

Consistent with the NTTAA, we conducted searches to identify voluntary consensus standards for use in emissions testing. The search for emissions testing procedures identified 34 voluntary consensus standards that appeared to have possible use in lieu of EPA standard reference methods. After reviewing the available standards, we determined that 26 of the candidate consensus standards identified for measuring emissions of the HAP or surrogates subject to the emission limitations in the rule would not be practical due to lack of equivalency, documentation, validation data, and other important technical and policy considerations. Eight of the remaining candidate consensus are under development or currently under EPA review. We plan to follow, review, and consider adopting these standards after their development and we complete further review.

One consensus standard, ASTM D6216–98, is practical for EPA use in Performance Specification 1 (PS–1) in 40 CFR part 60, appendix B, ''Specifications and Test Procedures for Opacity Continuous Emission Monitoring Systems in Stationary Sources.'' This ASTM method can best be used in place of the design specification verification procedures currently in sections 5 and 6 of PS–1. We proposed ASTM D6216–98 for incorporation by reference in another rulemaking (63 FR 50824, September 23, 1998). Comments from the proposal have been addressed and we expect to complete this action in the near future. For these reasons, we do not propose to adopt ASTM D6216–98 in lieu of PS–1 requirements as it would be impractical to us to act independently from the other rulemaking already undergoing promulgation, and because ASTM D6216 does not address all the requirements specified in PS–1.

Tables 4 and 40 in subpart UUU list the EPA test methods and performance specifications included in this rule. Most of these methods and performance specifications have been used by States and industry for more than 10 years. Nevertheless, as provided by § 63.7(f) of the NESHAP General Provisions (40 CFR part 63, subpart A), any State or facility may apply to EPA for permission to use an alternative method in place of any of the EPA test methods or performance specifications listed in the rule.

J. Congressional Review Act

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

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Petroleum refineries.

Dated: March 19, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

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

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

2. Part 63 is amended by adding subpart UUU to read as follows:

Subpart UUU—National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units

Sec.

What This Subpart Covers

63.1560 What is the purpose of this subpart?
63.1561 Am I subject to this subpart?
63.1562 What parts of my plant are covered by this subpart?
63.1563 When do I have to comply with this subpart?

Catalytic Cracking Units, Catalytic Reforming Units, Sulfur Recovery Units, and Bypass Lines

63.1564 What are my requirements for metal HAP emissions from catalytic cracking units?
63.1565 What are my requirements for organic HAP emissions from catalytic cracking units?
63.1566 What are my requirements for organic HAP emissions from catalytic reforming units?
63.1567 What are my requirements for inorganic HAP emissions from catalytic reforming units?

63.1568 What are my requirements for HAP emissions from sulfur recovery units?
63.1569 What are my requirements for HAP emissions from bypass lines?

General Compliance Requirements

63.1570 What are my general requirements for complying with this subpart?
63.1571 How and when must I conduct a performance test or other initial compliance demonstration?
63.1572 What are my monitoring installation, operation, and maintenance requirements?
63.1573 What are my monitoring alternatives?

Notifications, Reports, and Records

63.1574 What notifications must I submit and when?
63.1575 What reports must I submit and when?
63.1576 What records must I keep, in what form, and for how long?

Other Requirements and Information

63.1577 What parts of the General Provisions apply to me?
63.1578 Who implements and enforces this subpart?
63.1579 What definitions apply to this subpart?

Tables

Table 1 to Subpart UUU of Part 63—Metal HAP Emission Limits for Catalytic Cracking Units
Table 2 to Subpart UUU of Part 63—Operating Limits for Metal HAP Emissions from Catalytic Cracking Units
Table 3 to Subpart UUU of Part 63—Continuous Monitoring Systems for Metal HAP Emissions from Catalytic Cracking Units
Table 4 to Subpart UUU of Part 63—Requirements for Performance Tests for Metal HAP Emissions from Catalytic Cracking Units Not Subject to the New Source Performance Standard (NSPS) for Particulate Matter (PM)
Table 5 to Subpart UUU of Part 63—Initial Compliance with Metal HAP Emission Limits for Catalytic Cracking Units
Table 6 to Subpart UUU of Part 63—Continuous Compliance with Metal HAP Emission Limits for Catalytic Cracking Units
Table 7 to Subpart UUU of Part 63—Continuous Compliance with Operating Limits for Metal HAP Emissions from Catalytic Cracking Units
Table 8 to Subpart UUU of Part 63—Organic HAP Emission Limits for Catalytic Cracking Units
Table 9 to Subpart UUU of Part 63—Operating Limits for Organic HAP Emissions from Catalytic Cracking Units
Table 10 to Subpart UUU of Part 63—Continuous Monitoring Systems for Organic HAP Emissions from Catalytic Cracking Units
Table 11 to Subpart UUU of Part 63—Requirements for Performance Tests for Organic HAP Emissions from Catalytic Cracking Units Not Subject to the New Source Performance Standard (NSPS) for Carbon Monoxide (CO)
Table 12 to Subpart UUU of Part 63—Initial Compliance with Organic HAP Emission Limits for Catalytic Cracking Units
Table 13 to Subpart UUU of Part 63—Continuous Compliance with Organic HAP Emission Limits for Catalytic Cracking Units
Table 14 to Subpart UUU of Part 63—Continuous Compliance with Operating Limits for Organic HAP Emissions from Catalytic Cracking Units
Table 15 to Subpart UUU of Part 63—Organic HAP Emission Limits for Catalytic Reforming Units
Table 16 to Subpart UUU of Part 63—Operating Limits for Organic HAP Emissions from Catalytic Reforming Units
Table 17 to Subpart UUU of Part 63—Continuous Monitoring Systems for Organic HAP Emissions from Catalytic Reforming Units
Table 18 to Subpart UUU of Part 63—Requirements for Performance Tests for Organic HAP Emissions from Catalytic Reforming Units
Table 19 to Subpart UUU of Part 63—Initial Compliance with Organic HAP Emission Limits for Catalytic Reforming Units
Table 20 to Subpart UUU of Part 63—Continuous Compliance with Organic HAP Emission Limits for Catalytic Reforming Units
Table 21 to Subpart UUU of Part 63—Continuous Compliance with Operating Limits for Organic HAP Emissions from Catalytic Reforming Units
Table 22 to Subpart UUU of Part 63—Inorganic HAP Emission Limits for Catalytic Reforming Units
Table 23 to Subpart UUU of Part 63—Operating Limits for Inorganic HAP Emission Limitations for Catalytic Reforming Units
Table 24 to Subpart UUU of Part 63—Continuous Monitoring Systems for Inorganic HAP Emissions from Catalytic Reforming Units
Table 25 to Subpart UUU of Part 63—Requirements for Performance Tests for Inorganic HAP Emissions from Catalytic Reforming Units
Table 26 to Subpart UUU of Part 63—Initial Compliance with Inorganic HAP Emission Limits for Catalytic Reforming Units
Table 27 to Subpart UUU of Part 63—Continuous Compliance with Inorganic HAP Emission Limits for Catalytic Reforming Units
Table 28 to Subpart UUU of Part 63—Continuous Compliance with Operating Limits for Inorganic HAP Emissions from Catalytic Reforming Units
Table 29 to Subpart UUU of Part 63—HAP Emission Limits for Sulfur Recovery Units
Table 30 to Subpart UUU of Part 63—Operating Limits for HAP Emissions from Sulfur Recovery Units
Table 31 to Subpart UUU of Part 63—Continuous Monitoring Systems for HAP Emissions from Sulfur Recovery Units
Table 32 to Subpart UUU of Part 63—Requirements for Performance Tests for HAP Emissions from Sulfur Recovery Units Not Subject to the New Source Performance Standards (NSPS) for Sulfur Oxides
Table 33 to Subpart UUU of Part 63—Initial Compliance with HAP Emission Limits for Sulfur Recovery Units
Table 34 to Subpart UUU of Part 63—Continuous Compliance with HAP Emission Limits for Sulfur Recovery Units
Table 35 to Subpart UUU of Part 63—Continuous Compliance with Operating Limits for HAP Emissions from Sulfur Recovery Units
Table 36 to Subpart UUU of Part 63—Work Practice Standards for HAP Emissions from Bypass Lines
Table 37 to Subpart UUU of Part 63—Requirements for Performance Tests for Bypass Lines
Table 38 to Subpart UUU of Part 63—Initial Compliance with Work Practice Standards for HAP Emissions from Bypass Lines
Table 39 to Subpart UUU of Part 63—Continuous Compliance with Work Practice Standards for HAP Emissions from Bypass Lines
Table 40 to Subpart UUU of Part 63—Requirements for Installation, Operation, and Maintenance of Continuous Opacity Monitoring Systems and Continuous Emission Monitoring Systems
Table 41 to Subpart UUU of Part 63—Requirements for Installation, Operation, and Maintenance of Continuous Parameter Monitoring Systems
Table 42 to Subpart UUU of Part 63—Additional Information for Initial Notification of Compliance Status
Table 43 to Subpart UUU of Part 63—Requirements for Reports
Table 44 to Subpart UUU of Part 63—Applicability of NESHAP General Provisions to Subpart UUU

What This Subpart Covers

§ 63.1560 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (HAP) emitted from petroleum refineries. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations and work practice standards.

§ 63.1561 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a petroleum refinery that is located at a major source of HAP emissions.

(1) A petroleum refinery is an establishment engaged primarily in petroleum refining as defined in the Standard Industrial Classification (SIC) code 2911 and the North American Industry Classification (NAIC) code 32411, and used mainly for:

(i) Producing transportation fuels (such as gasoline, diesel fuels, and jet fuels), heating fuels (such as kerosene, fuel gas distillate, and fuel oils), or lubricants;

(ii) Separating petroleum; or

(iii) Separating, cracking, reacting, or reforming an intermediate petroleum

stream, or recovering a by-product(s) from the intermediate petroleum stream (e.g., sulfur recovery).

(2) A major source of HAP is a plant site that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year.

(b) [Reserved]

§ 63.1562 What parts of my plant are covered by this subpart?

(a) This subpart applies to each new, reconstructed, or existing affected source at a petroleum refinery.

(b) The affected sources are:

(1) Each catalytic cracking unit that regenerates catalyst.

(2) Each catalytic reforming unit that regenerates catalyst.

(3) Each sulfur recovery unit and the tail gas treatment unit serving it.

(4) Each bypass line serving a new, existing, or reconstructed catalytic cracking unit, catalytic reforming unit, or sulfur recovery unit. This means each vent system that contains a bypass line (e.g., ductwork) that could divert an affected vent stream away from a control device used to comply with the requirements of this subpart.

(c) An affected source is a new affected source if you commence construction of the affected source after September 11, 1998, and you meet the applicability criteria in § 63.1561 at the time you commenced construction.

(d) Any affected source is reconstructed if you meet the criteria in § 63.2.

(e) An affected source is existing if it is not new or reconstructed.

(f) This subpart does not apply to:

(1) A thermal catalytic cracking unit.

(2) A sulfur recovery unit that does not recover elemental sulfur or where the modified reaction is carried out in a water solution which contains a metal ion capable of oxidizing the sulfide ion to sulfur (e.g., the LO–CAT II process).

(3) A redundant sulfur recovery unit not located at a petroleum refinery and used by the refinery only for emergency or maintenance backup.

(4) Equipment associated with bypass lines such as low leg drains, high point bleed, analyzer vents, open-ended valves or lines, or pressure relief valves needed for safety reasons.

(5) Gaseous streams routed to a fuel gas system.

§ 63.1563 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to the requirements in paragraphs (a)(1) and (2) of this section.

(1) If you startup your affected source before April 11, 2002, then you must comply with the emission limitations and work practice standards for new and reconstructed sources in this subpart no later than April 11, 2002.

(2) If you startup your affected source after April 11, 2002, you must comply with the emission limitations and work practice standards for new and reconstructed sources in this subpart upon startup of your affected source.

(b) If you have an existing affected source, you must comply with the emission limitations and work practice standards for existing affected sources in this subpart by no later than April 11, 2005 except as specified in paragraph (c) of this section.

(c) We will grant an extension of compliance for an existing catalytic cracking unit allowing additional time to meet the emission limitations and work practice standards for catalytic cracking units in §§ 63.1564 and 63.1565 if you commit to hydrotreating the catalytic cracking unit feedstock and to meeting the emission limitations of this subpart on the same date that your facility meets the final Tier 2 gasoline sulfur control standard (40 CFR part 80, subpart J). To obtain an extension, you must submit a written notification to your permitting authority according to the requirements in § 63.1574(e). Your notification must include the information in paragraphs (c)(1) and (2) of this section.

(1) Identification of the affected source with a brief description of the controls to be installed (if needed) to comply with the emission limitations for catalytic cracking units in this subpart.

(2) A compliance schedule, including the information in paragraphs (c)(2)(i) through (iv) of this section.

(i) The date by which onsite construction or the process change is to be initiated.

(ii) The date by which onsite construction or the process change is to be completed.

(iii) The date by which your facility will achieve final compliance with both the final Tier 2 gasoline sulfur control standard as specified in § 80.195, and the emission limitations and work practice standards for catalytic cracking units in this subpart. In no case will your permitting authority grant an extension beyond the date you are required to meet the Tier 2 gasoline sulfur control standard or December 31, 2009, whichever comes first. If you don't comply with the emission limitations and work practice standards for existing catalytic cracking units by the specified date, you will be out-of-compliance with the requirements for catalytic cracking units beginning April 11, 2005.

(iv) A brief description of interim emission control measures that will be taken to ensure proper operation and maintenance of the process equipment during the period of the compliance extension.

(d) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, the requirements in paragraphs (d)(1) and (2) of this section apply.

(1) Any portion of the existing facility that is a new affected source or a new reconstructed source must be in compliance with the requirements of this subpart upon startup.

(2) All other parts of the source must be in compliance with the requirements of this subpart by no later than 3 years after it becomes a major source or, if applicable, the extended compliance date granted according to the requirements in paragraph (c) of this section.

(e) You must meet the notification requirements in § 63.1574 according to the schedule in § 63.1574 and in 40 CFR part 63, subpart A. Some of the notifications must be submitted before the date you are required to comply with the emission limitations and work practice standards in this subpart.

Catalytic Cracking Units, Catalytic Reforming Units, Sulfur Recovery Units, and Bypass Lines

§ 63.1564 What are my requirements for metal HAP emissions from catalytic cracking units?

(a) *What emission limitations and work practice standards must I meet?* You must:

(1) Meet each emission limitation in Table 1 of this subpart that applies to you. If your catalytic cracking unit is subject to the NSPS for PM in § 60.102 of this chapter, you must meet the emission limitations for NSPS units. If your catalytic cracking unit isn't subject to the NSPS for PM, you can choose from the four options in paragraphs (a)(1)(i) through (iv) of this section:

(i) You can elect to comply with the NSPS requirements (Option 1);

(ii) You can elect to comply with the PM emission limit (Option 2);

(iii) You can elect to comply with the Nickel (Ni) lb/hr emission limit (Option 3); or

(iv) You can elect to comply with the Ni lb/1,000 lbs of coke burn-off emission limit (Option 4).

(2) Comply with each operating limit in Table 2 of this subpart that applies to you.

(3) Prepare an operation, maintenance, and monitoring plan according to the requirements in § 63.1574(f) and operate at all times according to the procedures in the plan.

(4) The emission limitations and operating limits for metal HAP emissions from catalytic cracking units required in paragraphs (a)(1) and (2) of this section do not apply during periods of planned maintenance preapproved by the applicable permitting authority according to the requirements in § 63.1575(j).

(b) *How do I demonstrate initial compliance with the emission limitations and work practice standard?* You must:

(1) Install, operate, and maintain a continuous monitoring system(s) according to the requirements in § 63.1572 and Table 3 of this subpart.

(2) Conduct a performance test for each catalytic cracking unit not subject to the NSPS for PM according to the requirements in § 63.1571 and under the conditions specified in Table 4 of this subpart.

(3) Establish each site-specific operating limit in Table 2 of this subpart that applies to you according to the procedures in Table 4 of this subpart.

(4) Use the procedures in paragraphs (b)(4)(i) through (iv) of this section to determine initial compliance with the emission limitations.

(i) If you elect Option 1 in paragraph (a)(1)(i) of ths section, the NSPS requirements, compute the PM emission rate (lb/1,000 lbs of coke burn-off) for each run using Equations 1, 2, and 3 (if applicable) of this section as follows:

$$R_c = K_1 Q_r \left(\%CO_2 + \%CO\right) + K_2 Q_a - K_3 Q_r \left[\left(\%CO/2\right) + \%CO_2 + \%O_2\right] + K_3 Q_{oxy}\left(\%O_{xy}\right) \qquad \text{(Eq. 1)}$$

Where:

R_c = Coke burn-off rate, kg/hr (lb/hr);

Q_r = Volumetric flow rate of exhaust gas from catalyst regenerator before adding air or gas streams. Example: You may measure after an electrostatic precipitator, but you must measure before a carbon monoxide boiler, dscm/min (dscf/min);

Q_a = Volumetric flow rate of air to catalytic cracking unit catalyst regenerator, as determined from instruments in the catalytic cracking unit control room, dscm/min (dscf/min);

$\%CO_2$ = Carbon dioxide concentration in regenerator exhaust, percent by volume (dry basis);

%CO = Carbon monoxide concentration in regenerator exhaust, percent by volume (dry basis);

$\%O_2$ = Oxygen concentration in regenerator exhaust, percent by volume (dry basis);

K_1 = Material balance and conversion factor, 0.2982 (kg-min)/(hr-dscm-%) (0.0186 (lb-min)/(hr-dscf-%));

K_2 = Material balance and conversion factor, 2.088 (kg-min)/(hr-dscm) (0.1303 (lb-min)/(hr-dscf));

K_3 = Material balance and conversion factor, 0.0994 (kg-min)/(hr-dscm-%) (0.0062 (lb-min)/(hr-dscf-%));

Q_{oxy} = Volumetric flow rate of oxygen-enriched air stream to regenerator, as determined from instruments in the catalytic cracking unit control room, dscm/min (dscf/min); and

$\%O_{xy}$ = Oxygen concentration in oxygen-enriched air stream, percent by volume (dry basis).

$$E = \frac{K \times C_s \times Q_{sd}}{R_c} \qquad \text{(Eq. 2)}$$

Where:

E = Emission rate of PM, kg/1,000 kg (lb/1,000 lb) of coke burn-off;

C_s = Concentration of PM, g/dscm (lb/dscf);

Q_{sd} = Volumetric flow rate of the catalytic cracking unit catalyst regenerator flue gas as measured by Method 2 in appendix A to part 60 of this chapter, dscm/hr (dscf/hr);

R_c = Coke burn-off rate, kg coke/hr (1,000 lb coke/hr); and

K = Conversion factor, 1.0 (kg^2/g)/(1,000 kg) (1,000 lb/(1,000 lb)).

$$E_s = 1.0 + A\left(H/R_c\right)K' \qquad \text{(Eq. 3)}$$

Where:

E_s = Emission rate of PM allowed, kg/1,000 kg (1b/1,000 lb) of coke burn-off in catalyst regenerator;

1.0 = Emission limitation, kg coke/1,000 kg (lb coke/1,000 lb);

A = Allowable incremental rate of PM emissions, 0.18 g/million cal (0.10 lb/million Btu); and

H = Heat input rate from solid or liquid fossil fuel, million cal/hr (million Btu/hr). Make sure your permitting authority approves procedures for determining the heat input rate.

R_c = Coke burn-off rate, kg coke/hr (1,000 lb coke/hr) determined using Equation 1 of this section; and

K′ = Conversion factor to units to standard, 1.0 (kg^2/g)/(1,000 kg) (10^3 lb/(1,000 lb)).

(ii) If you elect Option 2 in paragraph (a)(1)(ii) of this section, the PM emission limit, compute your PM emission rate (lb/1,000 lbs of coke burn-off) using Equations 1 and 2 of this section and your site-specific opacity operating limit (if you use a continuous opacity monitoring system) using Equation 4 of this section as follows:

$$\text{Opacity Limit} = \text{Opacity}_{st} \times \left(\frac{1\ \text{lb/klb coke burn}}{\text{PMEmR}_{st}}\right) \qquad \text{(Eq. 4)}$$

Where:

Opacity limit = Maximum permissible hourly average opacity, percent, or 10 percent, whichever is greater;

Opacity_{st} = Hourly average opacity measured during the source test runs, percent; and

PMEmR_{st} = PM emission rate measured during the source test, lb/1,000 lbs coke burn.

$$E_{Ni_1} = C_{Ni} \times Q_{sd} \qquad \text{(Eq. 5)}$$

(iii) If you elect Option 3 in paragraph (a)(1)(iii) of this section, the Ni lb/hr emission limit, compute your Ni emission rate using Equation 5 of this section and your site-specific Ni operating limit (if you use a continuous opacity monitoring system) using Equations 6 and 7 of this section as follows:

Where:

E_{Ni1} = Mass emission rate of Ni, mg/hr (lb/hr); and

C_{Ni} = Ni concentration in the catalytic cracking unit catalyst regenerator flue gas as measured by Method 29 in appendix A to part 60 of this chapter, mg/dscm (lbs/dscf).

$$\text{Opacity}_1 = \frac{13\ \text{g Ni/hr}}{\text{NiEmR1}_{st}} \times \text{Opacity}_{st} \qquad \text{(Eq. 6)}$$

Where:

Opacity_1 = Opacity value for use in Equation 7 of this section, percent, or 10 percent, whichever is greater; and

NiEmR1_{st} = Average Ni emission rate calculated as the arithmetic average Ni emission rate using Equation 5 of this section for each of the performance test runs, g Ni/hr.

$$\text{Ni Operating Limit}_1 = \text{Opacity}_1 \times Q_{mon,st} \times \text{E-Cat}_{st} \qquad \text{(Eq. 7)}$$

Where:

Ni operating limit_1 = Maximum permissible hourly average Ni operating limit, percent-acfm-ppmw, i.e., your site-specific Ni operating limit;

$Q_{mon,st}$ = Hourly average actual gas flow rate as measured by the continuous parameter monitoring system during the performance test or using the alternative procedure in § 63.1573, acfm; and

E–Cat_{st} = Ni concentration on equilibrium catalyst measured during source test, ppmw.

(iv) If you elect Option 4 in paragraph (a)(1)(iv) of this section, the Ni lbs/1,000 lbs of coke burn-off emission limit, compute your Ni emission rate using Equations 1 and 8 of this section and your site-specific Ni operating limit (if you use a continuous opacity monitoring system) using Equations 9 and 10 of this section as follows:

$$E_{Ni_2} = \frac{C_{Ni} \times Q_{sd}}{R_c} \qquad \text{(Eq. 8)}$$

Where:

E_{Ni2} = Normalized mass emission rate of Ni, mg/kg coke (lb/1,000 lbs coke).

$$\text{Opacity}_2 = \frac{1.0\ \text{mg/kg coke}}{\text{NiEmR2}_{st}} \times \text{Opacity}_{st} \qquad \text{(Eq. 9)}$$

Where:

Opacity_2 = Opacity value for use in Equation 10 of this section, percent, or 10 percent, whichever is greater; and

NiEmR2_{st} = Average Ni emission rate calculated as the arithmetic average Ni emission rate using Equation 8 of this section for each of the performance test runs, mg/kg coke.

$$\text{Ni Operating Limit}_2 = \text{Opacity}_2 \times \text{E-Cat}_{st} \times \frac{Q_{mon,st}}{R_{c,st}} \qquad \text{(Eq. 10)}$$

Where:

Ni operating limit_2 = Maximum permissible hourly average Ni operating limit, percent-ppmw-acfm-hr/kg coke, i.e., your site-specific Ni operating limit; and

$R_{c,st}$ = Coke burn rate from Equation 1 of this section, as measured during the initial performance test, kg coke/hr.

(5) Demonstrate initial compliance with each emission limitation that applies to you according to Table 5 of this subpart.

(6) Demonstrate initial compliance with the work practice standard in paragraph (a)(3) of this section by submitting your operation, maintenance, and monitoring plan to your permitting authority as part of your Notification of Compliance Status.

(7) Submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.1574.

(c) *How do I demonstrate continuous compliance with the emission limitations and work practice standards?* You must:

(1) Demonstrate continuous compliance with each emission limitation in Tables 1 and 2 of this subpart that applies to you according to the methods specified in Tables 6 and 7 of this subpart.

(2) Demonstrate continuous compliance with the work practice standard in paragraph (a)(3) of this section by maintaining records to document conformance with the procedures in your operation, maintenance, and monitoring plan.

(3) If you use a continuous opacity monitoring system and elect to comply with Option 3 in paragraph (a)(1)(iii) of this section, determine continuous compliance with your site-specific Ni operating limit by using Equation 11 of this section as follows:

$$\text{Ni Operating Value}_1 = \text{Opacity} \times Q_{mon} \times \text{E-Cat} \qquad \text{(Eq. 11)}$$

Where:

Ni operating value$_1$ = Maximum permissible hourly average Ni standard operating value, %-acfm-ppmw;

Opacity = Hourly average opacity, percent;

Q_{mon} = Hourly average actual gas flow rate as measured by continuous parameter monitoring system or calculated by alternative procedure in § 63.1573, acfm; and

E-Cat = Ni concentration on equilibrium catalyst from weekly or more recent measurement, ppmw.

(4) If you use a continuous opacity monitoring system and elect to comply with Option 4 in paragraph (a)(1)(iv) of this section, determine continuous compliance with your site-specific Ni operating limit by using Equation 12 of this section as follows:

$$\text{Ni Operating Value}_2 = \frac{\text{Opacity} \times \text{E-Cat} \times Q_{mon}}{R_c} \qquad \text{(Eq. 12)}$$

Where:

Ni operating value$_2$ = Maximum permissible hourly average Ni standard operating value, percent-acfm-ppmw-hr/kg coke.

§ 63.1565 What are my requirements for organic HAP emissions from catalytic cracking units?

(a) *What emission limitations and work practice standards must I meet?* You must:

(1) Meet each emission limitation in Table 8 of this subpart that applies to you. If your catalytic cracking unit is subject to the NSPS for carbon monoxide (CO) in § 60.103 of this chapter, you must meet the emission limitations for NSPS units. If your catalytic cracking unit isn't subject to the NSPS for CO, you can choose from the two options in paragraphs (a)(1)(i) through (ii) of this section:

(i) You can elect to comply with the NSPS requirements (Option 1); or

(ii) You can elect to comply with the CO emission limit (Option 2).

(2) Comply with each site-specific operating limit in Table 9 of this subpart that applies to you.

(3) Prepare an operation, maintenance, and monitoring plan according to the requirements in § 63.1574(f) and operate at all times according to the procedures in the plan.

(4) The emission limitations and operating limits for organic HAP emissions from catalytic cracking units required in paragraphs (a)(1) and (2) of this section do not apply during periods of planned maintenance preapproved by the applicable permitting authority according to the requirements in § 63.1575(j).

(b) *How do I demonstrate initial compliance with the emission limitations and work practice standards?* You must:

(1) Install, operate, and maintain a continuous monitoring system according to the requirements in § 63.1572 and Table 10 of this subpart. Except:

(i) Whether or not your catalytic cracking unit is subject to the NSPS for CO in § 60.103 of this chapter, you don't have to install and operate a continuous emission monitoring system if you show that CO emissions from your vent average less than 50 parts per million (ppm), dry basis. You must get an exemption from your permitting authority, based on your written request. To show that the emissions average is less than 50 ppm (dry basis), you must continuously monitor CO emissions for 30 days using a CO continuous emission monitoring system that meets the requirements in § 63.1572.

(ii) If your catalytic cracking unit isn't subject to the NSPS for CO, you don't have to install and operate a continuous emission monitoring system or a continuous parameter monitoring system if you vent emissions to a boiler (including a ''CO boiler'') or process heater that has a design heat input capacity of at least 44 megawatts (MW).

(iii) If your catalytic cracking unit isn't subject to the NSPS for CO, you don't have to install and operate a continuous emission monitoring system or a continuous parameter monitoring system if you vent emissions to a boiler or process heater in which all vent streams are introduced into the flame zone.

(2) Conduct each performance test for a catalytic cracking unit not subject to the NSPS for CO according to the requirements in § 63.1571 and under the conditions specified in Table 11 of this subpart.

(3) Establish each site-specific operating limit in Table 9 of this subpart that applies to you according to the procedures in Table 11 of this subpart.

(4) Demonstrate initial compliance with each emission limitation that applies to you according to Table 12 of this subpart.

(5) Demonstrate initial compliance with the work practice standard in paragraph (a)(3) of this section by submitting the operation, maintenance, and monitoring plan to your permitting authority as part of your Notification of Compliance Status according to § 63.1574.

(6) Submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.1574.

(c) *How do I demonstrate continuous compliance with the emission limitations and work practice standards?* You must:

(1) Demonstrate continuous compliance with each emission limitation in Tables 8 and 9 of this subpart that applies to you according to the methods specified in Tables 13 and 14 of this subpart.

(2) Demonstrate continuous compliance with the work practice standard in paragraph (a)(3) of this section by complying with the procedures in your operation, maintenance, and monitoring plan.

§ 63.1566 What are my requirements for organic HAP emissions from catalytic reforming units?

(a) *What emission limitations and work practice standards must I meet?* You must:

(1) Meet each emission limitation in Table 15 of this subpart that applies to you. You can choose from the two options in paragraphs (a)(1)(i) through (ii) of this section:

(i) You can elect to vent emissions of total organic compounds (TOC) to a flare that meets the control device requirements in § 63.11(b) (Option 1); or

(ii) You can elect to use a control device to meet a TOC percent reduction standard or concentration limit, whichever is less stringent (Option 2).

(2) Comply with each site-specific operating limit in Table 16 of this subpart that applies to you.

(3) The emission limitations in Tables 15 and 16 of this subpart apply to emissions from catalytic reforming unit process vents that occur during depressuring and purging operations. These process vents include those used during unit depressurization, purging, coke burn, catalyst rejuvenation, and reduction or activation purge.

(4) The emission limitations in Tables 15 and 16 of this subpart do not apply to emissions from process vents during depressuring and purging operations when the reactor vent pressure is 5 pounds per square inch gauge (psig) or less.

(5) Prepare an operation, maintenance, and monitoring plan according to the requirements in § 63.1574(f) and operate at all times according to the procedures in the plan.

(b) *How do I demonstrate initial compliance with the emission limitations and work practice standard?* You must:

(1) Install, operate, and maintain a continuous monitoring system(s) according to the requirements in § 63.1572 and Table 17 of this subpart.

(2) Conduct each performance test for a catalytic reforming unit according to the requirements in § 63.1571 and under the conditions specified in Table 18 of this subpart.

(3) Establish each site-specific operating limit in Table 16 of this subpart that applies to you according to the procedures in Table 18 of this subpart.

(4) Use the procedures in paragraph (b)(4)(i) or (ii) of this section to determine initial compliance with the emission limitations.

(i) If you elect the percent reduction standard under Option 2, calculate the emission rate of TOC using Equation 1 of this section (if you use Method 25) or Equation 2 of this section (if you use Method 25A); then calculate the mass emission reduction using Equation 3 of this section as follows:

$$E = K_4 M_c Q_s \qquad \text{(Eq. 1)}$$

Where:

E = Emission rate of TOC in the vent stream, kilograms-C per hour;

K_4 = Constant, 6.0×10^{-5} (kilograms per milligram)(minutes per hour);

M_c = Mass concentration of total gaseous nonmethane organic as measured and calculated using Method 25 in appendix A to part 60 of this chapter, mg/dscm; and

Q_s = Vent stream flow rate, dscm/min, at a temperature of 20 degrees Celsius (C).

$$E = K_5 C_{TOC} Q_S \qquad \text{(Eq. 2)}$$

Where:

E = Emission rate of TOC in the vent stream, kilograms-C per hour;

K_5 = Constant, 9.0 x 10^{-5}(parts per million) $^{-1}$ (gram-mole per standard cubic meter) (gram-C per gram-mole-propane) (kilogram per gram) (minutes per hour), where the standard temperature (standard cubic meter) is at 20 degrees C (uses 36g–C/g.mole propane);

C_{TOC} = Concentration of TOC on a dry basis in ppmv as propane as measured by Method 25A in appendix A to part 60 of this chapter; and

Q_s = Vent stream flow rate, dry standard cubic meters per minute, at a temperature of 20 degrees C.

$$\%\ \text{reduction} = \frac{E_i - E_o}{E_i} \times 100\% \qquad \text{(Eq. 3)}$$

Where:

E_i = Mass emission rate of TOC at control device inlet, kg/hr; and

E_o = Mass emission rate of TOC at control device outlet, kg/hr.

(5) If you elect the 20 parts per million by volume (ppmv) concentration limit, correct the measured TOC concentration for oxygen (O_2) content in the gas stream using Equation 4 of this section as follows:

$$C_{TOC,\,3\%O_2} = C_{TOC}\left(\frac{17.9\%}{20.9\% - \%O_2}\right) \qquad \text{(Eq. 4)}$$

(6) You are not required to do a TOC performance test if:

(i) You elect to vent emissions to a flare as provided in paragraph (a)(1)(i) of this section (Option 1); or

(ii) You elect the TOC percent reduction or concentration limit in paragraph (a)(1)(ii) of this section (Option 2), and you use a boiler or process heater with a design heat input capacity of 44 MW or greater or a boiler or process heater in which all vent streams are introduced into the flame zone.

(7) Demonstrate initial compliance with each emission limitation that applies to you according to Table 19 of this subpart.

(8) Demonstrate initial compliance with the work practice standard in paragraph (a)(5) of this section by submitting the operation, maintenance, and monitoring plan to your permitting authority as part of your Notification of Compliance Status.

(9) Submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.1574.

(c) *How do I demonstrate continuous compliance with the emission limitations and work practice standards?* You must:

(1) Demonstrate continuous compliance with each emission limitation in Tables 15 and 16 of this subpart that applies to you according to the methods specified in Tables 20 and 21 of this subpart.

(2) Demonstrate continuous compliance with the work practice standards in paragraph (a)(3) of this section by complying with the procedures in your operation, maintenance, and monitoring plan.

§ 63.1567 What are my requirements for inorganic HAP emissions from catalytic reforming units?

(a) *What emission limitations and work practice standards must I meet?* You must:

(1) Meet each emission limitation in Table 22 of this subpart that applies to you. These emission limitations apply during coke burn-off and catalyst rejuvenation. You can choose from the two options in paragraphs (a)(1)(i) through (ii) of this section:

(i) You can elect to use a control device to meet either a percent reduction standard for hydrogen chloride (HCl) emissions (Option 1); or

(ii) You can elect to meet an HCl concentration limit (Option 2).

(2) Meet each site-specific operating limit in Table 23 of this subpart that applies to you. These operating limits apply during coke burn-off and catalyst rejuvenation.

(3) Prepare an operation, maintenance, and monitoring plan according to the requirements in § 63.1574(f) and operate at all times according to the procedures in the plan.

(b) *How do I demonstrate initial compliance with the emission limitations and work practice standard?* You must:

(1) Install, operate, and maintain a continuous monitoring system(s) according to the requirements in § 63.1572 and Table 24 of this subpart.

(2) Conduct each performance test for a catalytic reforming unit according to the requirements in § 63.1571 and the conditions specified in Table 25 of this subpart.

(3) Establish each site-specific operating limit in Table 23 of this subpart that applies to you according to the procedures in Table 25 of this subpart.

(4) Demonstrate initial compliance with each emission limitation that applies to you according to Table 26 of this subpart.

(5) Demonstrate initial compliance with the work practice standard in paragraph (a)(3) of this section by submitting the operation, maintenance, and monitoring plan to your permitting authority as part of your Notification of Compliance Status.

(6) Submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.1574.

(c) *How do I demonstrate continuous compliance with the emission limitations and work practice standard?* You must:

(1) Demonstrate continuous compliance with each emission limitation in Tables 22 and 23 of this subpart that applies to you according to the methods specified in Tables 27 and 28 of this subpart.

(2) Demonstrate continuous compliance with the work practice standard in paragraph (a)(3) of this section by maintaining records to document conformance with the procedures in your operation, maintenance and monitoring plan.

§ 63.1568 What are my requirements for HAP emissions from sulfur recovery units?

(a) *What emission limitations and work practice standard must I meet?* You must:

(1) Meet each emission limitation in Table 29 of this subpart that applies to you. If your sulfur recovery unit is subject to the NSPS for sulfur oxides in § 60.104 of this chapter, you must meet the emission limitations for NSPS units. If your sulfur recovery unit isn't subject to the NSPS for sulfur oxides, you can choose from the options in paragraphs (a)(1)(i) through (ii) of this section:

(i) You can elect to meet the NSPS requirements (Option 1); or

(ii) You can elect to meet the total reduced sulfur (TRS) emission limitation (Option 2).

(2) Meet each operating limit in Table 30 of this subpart that applies to you.

(3) Prepare an operation, maintenance, and monitoring plan according to the requirements in § 63.1574(f) and operate at all times according to the procedures in the plan.

(b) *How do I demonstrate initial compliance with the emission limitations and work practice standards?* You must:

(1) Install, operate, and maintain a continuous monitoring system according to the requirements in § 63.1572 and Table 31 of this subpart.

(2) Conduct each performance test for a sulfur recovery unit not subject to the NSPS for sulfur oxides according to the requirements in § 63.1571 and under the conditions specified in Table 32 of this subpart.

(3) Establish each site-specific operating limit in Table 30 of this subpart that applies to you according to the procedures in Table 32 of this subpart.

(4) Correct the reduced sulfur samples to zero percent excess air using Equation 1 of this section as follows:

$$C_{adj} = C_{meas}\left[20.9_c/\left(20.9 - \%O_2\right)\right] \qquad \text{(Eq. 1)}$$

Where:

C_{adj} = pollutant concentration adjusted to zero percent oxygen, ppm or g/dscm;

C_{meas} = pollutant concentration measured on a dry basis, ppm or g/dscm;

20.9_c = 20.9 percent oxygen—0.0 percent oxygen (defined oxygen correction basis), percent;

20.9 = oxygen concentration in air, percent;

$\%O_2$ = oxygen concentration measured on a dry basis, percent.

(5) Demonstrate initial compliance with each emission limitation that applies to you according to Table 33 of this subpart.

(6) Demonstrate initial compliance with the work practice standard in paragraph (a)(3) of this section by submitting the operation, maintenance, and monitoring plan to your permitting authority as part of your notification of compliance status.

(7) Submit the notification of compliance status containing the results of the initial compliance demonstration according to the requirements in § 63.1574.

(c) *How do I demonstrate continuous compliance with the emission limitations and work practice standards?* You must:

(1) Demonstrate continuous compliance with each emission limitation in Tables 29 and 30 of this subpart that applies to you according to the methods specified in Tables 34 and 35 of this subpart.

(2) Demonstrate continuous compliance with the work practice standard in paragraph (a)(3) of this section by complying with the procedures in your operation, maintenance, and monitoring plan.

§ 63.1569 What are my requirements for HAP emissions from bypass lines?

(a) *What work practice standards must I meet?* (1) You must meet each work practice standard in Table 36 of this subpart that applies to you. You can choose from the four options in paragraphs (a)(1)(i) through (iv) of this section:

(i) You can elect to install an automated system (Option 1);

(ii) You can elect to use a manual lock system (Option 2);

(iii) You can elect to seal the line (Option 3); or

(iv) You can elect to vent to a control device (Option 4).

(2) As provided in § 63.6(g), we, the EPA, may choose to grant you permission to use an alternative to the work practice standard in paragraph (a)(1) of this section.

(3) You must prepare an operation, maintenance, and monitoring plan according to the requirements in § 63.1574(f) and operate at all times according to the procedures in the plan.

(b) *How do I demonstrate initial compliance with the work practice standards?* You must:

(1) If you elect the option in paragraph (a)(1)(i) of this section, conduct each performance test for a bypass line according to the requirements in § 63.1571 and under the conditions specified in Table 37 of this subpart.

(2) Demonstrate initial compliance with each work practice standard in Table 36 of this subpart that applies to you according to Table 38 of this subpart.

(3) Demonstrate initial compliance with the work practice standard in paragraph (a)(3) of this section by submitting the operation, maintenance, and monitoring plan to your permitting authority as part of your notification of compliance status.

(4) Submit the notification of compliance status containing the results of the initial compliance demonstration according to the requirements in § 63.1574.

(c) *How do I demonstrate continuous compliance with the work practice standards?* You must:

(1) Demonstrate continuous compliance with each work practice standard in Table 36 of this subpart that applies to you according to the requirements in Table 39 of this subpart.

(2) Demonstrate continuous compliance with the work practice standard in paragraph (a)(2) of this section by complying with the procedures in your operation, maintenance, and monitoring plan.

General Compliance Requirements

§ 63.1570 What are my general requirements for complying with this subpart?

(a) You must be in compliance with all of the non-opacity standards in this subpart during the times specified in § 63.6(f)(1).

(b) You must be in compliance with the opacity and visible emission limits in this subpart during the times specified in § 63.6(h)(1).

(c) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i). During the period between the compliance date specified for your affected source and the date upon which continuous monitoring systems have been installed and validated and any applicable operating limits have been set, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

(d) You must develop and implement a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

(e) During periods of startup, shutdown, and malfunction, you must operate in accordance with your SSMP.

(f) You must report each instance in which you did not meet each emission limitation and each operating limit in this subpart that applies to you. This includes periods of startup, shutdown, and malfunction. You also must report each instance in which you did not meet the work practice standards in this subpart that apply to you. These instances are deviations from the emission limitations and work practice standards in this subpart. These deviations must be reported according to the requirements in § 63.1575.

(g) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the SSMP. The SSMP must require that good air pollution control practices are used during those periods. The plan must also include elements designed to minimize the frequency of such periods (i.e., root cause analysis). The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e) and the contents of the SSMP.

§ 63.1571 How and when do I conduct a performance test or other initial compliance demonstration?

(a) *When must I conduct a performance test?* You must conduct performance tests and report the results by no later than 150 days after the compliance date specified for your source in § 63.1563 and according to the provisions in § 63.7(a)(2). If you are required to do a performance evaluation or test for a semi-regenerative catalytic reforming unit catalyst regenerator vent, you may do them at the first regeneration cycle after your compliance date and report the results in a followup Notification of Compliance Status report due no later than 150 days after the test.

(1) For each emission limitation or work practice standard where initial compliance is not demonstrated using a performance test, opacity observation, or visible emission observation, you must conduct the initial compliance demonstration within 30 calendar days after the compliance date that is specified for your source in § 63.1563.

(2) For each emission limitation where the averaging period is 30 days, the 30-day period for demonstrating initial compliance begins at 12:00 a.m. on the compliance date that is specified for your source in § 63.1563 and ends at 11:59 p.m., 30 calendar days after the compliance date that is specified for your source in § 63.1563.

(3) If you commenced construction or reconstruction between September 11, 1998 and April 11, 2002, you must demonstrate initial compliance with either the proposed emission limitation or the promulgated emission limitation no later than October 8, 2002 or within 180 calendar days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(4) If you commenced construction or reconstruction between September 11, 1998 and April 11, 2002, and you chose to comply with the proposed emission limitation when demonstrating initial compliance, you must conduct a second compliance demonstration for the promulgated emission limitation by October 10, 2005, or after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(b) *What are the general requirements for performance test and performance evaluations?* You must:

(1) Conduct each performance test according to the requirements in § 63.7(e)(1).

(2) Except for opacity and visible emission observations, conduct three separate test runs for each performance test as specified in § 63.7(e)(3). Each test run must last at least 1 hour.

(3) Conduct each performance evaluation according to the requirements in § 63.8(e).

(4) Not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(5) Calculate the average emission rate for the performance test by calculating the emission rate for each individual test run in the units of the applicable emission limitation using Equation 2, 5, or 8 of § 63.1564, and determining the arithmetic average of the calculated emission rates.

(c) *What procedures must I use for an engineering assessment?* You may choose to use an engineering assessment to calculate the process vent flow rate, net heating value, TOC emission rate, and total organic HAP emission rate expected to yield the highest daily emission rate when determining the emission reduction or outlet concentration for the organic HAP standard for catalytic reforming units. If you use an engineering assessment, you must document all data, assumptions, and procedures to the satisfaction of the applicable permitting authority. An engineering assessment may include the approaches listed in paragraphs (c)(1) through (c)(4) of this section. Other engineering assessments may be used but are subject to review and approval by the applicable permitting authority.

(1) You may use previous test results provided the tests are representative of current operating practices at the process unit, and provided EPA

methods or approved alternatives were used;

(2) You may use bench-scale or pilot-scale test data representative of the process under representative operating conditions;

(3) You may use maximum flow rate, TOC emission rate, organic HAP emission rate, or organic HAP or TOC concentration specified or implied within a permit limit applicable to the process vent; or

(4) You may use design analysis based on engineering principles, measurable process parameters, or physical or chemical laws or properties. Examples of analytical methods include, but are not limited to:

(i) Use of material balances based on process stoichiometry to estimate maximum TOC concentrations;

(ii) Calculation of hourly average maximum flow rate based on physical equipment design such as pump or blower capacities; and

(iii) Calculation of TOC concentrations based on saturation conditions.

(d) *Can I adjust the process or control device measured values when establishing an operating limit?* If you do a performance test to demonstrate compliance, you must base the process or control device operating limits for continuous parameter monitoring systems on the results measured during the performance test. You may adjust the values measured during the performance test according to the criteria in paragraphs (d)(1) through (3) of this section.

(1) If you must meet the HAP metal emission limitations in § 63.1564, you elect the option in paragraph (a)(1)(iii) in § 63.1564 (Ni lb/hr), and you use continuous parameter monitoring systems, you must establish an operating limit for the equilibrium catalyst Ni concentration based on the laboratory analysis of the equilibrium catalyst Ni concentration from the initial performance test. Section 63.1564(b)(2) allows you to adjust the laboratory measurements of the equilibrium catalyst Ni concentration to the maximum level. You must make this adjustment using Equation 1 of this section as follows:

$$\text{Ecat-Limit} = \frac{13\ \text{g Ni/hr}}{\text{NiEmR1}_{st}} \times \text{Ecat}_{st} \qquad \text{(Eq. 1)}$$

Where:

Ecat-Limit = Operating limit for equilibrium catalyst Ni concentration, mg/kg;

NiEmR1_{st} = Average Ni emission rate calculated as the arithmetic average Ni emission rate using Equation 5 of this section for each performance test run, g Ni/hr; and

Ecat_{st} = Average equilibrium Ni concentration from laboratory test results, mg/kg.

(2) If you must meet the HAP metal emission limitations in § 63.1564, you elect the option in paragraph (a)(1)(iv) in § 63.1564 (Ni lb/1,000 lb of coke burn-off), and you use continuous parameter monitoring systems, you must establish an operating limit for the equilibrium catalyst Ni concentration based on the laboratory analysis of the equilibrium catalyst Ni concentration from the initial performance test. Section 63.1564(b)(2) allows you to adjust the laboratory measurements of the equilibrium catalyst Ni concentration to the maximum level. You must make this adjustment using Equation 2 of this section as follows:

$$\text{Ecat-Limit} = \frac{1.0\ \text{mg/kg coke burn-off}}{\text{NiEmR2}_{st}} \times \text{Ecat}_{st} \qquad \text{(Eq. 2)}$$

Where:

NiEmR2_{st} = Average Ni emission rate calculated as the arithmetic average Ni emission rate using Equation 8 of § 63.1564 for each performance test run, mg/kg coke burn-off.

(3) If you choose to adjust the equilibrium catalyst Ni concentration to the maximum level, you can't adjust any other monitored operating parameter (i.e., gas flow rate, voltage, pressure drop, liquid-to-gas ratio).

(4) Except as specified in paragraph (d)(3) of this section, if you use continuous parameter monitoring systems, you may adjust one of your monitored operating parameters (flow rate, voltage and secondary current, pressure drop, liquid-to-gas ratio) from the average of measured values during the performance test to the maximum value (or minimum value, if applicable) representative of worst-case operating conditions, if necessary. This adjustment of measured values may be done using control device design specifications, manufacturer recommendations, or other applicable information. You must provide supporting documentation and rationale in your Notification of Compliance Status, demonstrating to the satisfaction of your permitting authority, that your affected source complies with the applicable emission limit at the operating limit based on adjusted values.

(e) *Can I change my operating limit?* You may change the established operating limit by meeting the requirements in paragraphs (e)(1) through (3) of this section.

(1) You may change your established operating limit for a continuous parameter monitoring system by doing an additional performance test, a performance test in conjunction with an engineering assessment, or an engineering assessment to verify that, at the new operating limit, you are in compliance with the applicable emission limitation.

(2) You must establish a revised operating limit for your continuous parameter monitoring system if you make any change in process or operating conditions that could affect control system performance or you change designated conditions after the last performance or compliance tests were done. You can establish the revised operating limit as described in paragraph (e)(1) of this section.

(3) You may change your site-specific opacity operating limit or Ni operating limit only by doing a new performance test.

§ 63.1572 What are my monitoring installation, operation, and maintenance requirements?

(a) You must install, operate, and maintain each continuous emission monitoring system according to the requirements in paragraphs (a)(1) through (4) of this section.

(1) You must install, operate, and maintain each continuous emission monitoring system according to the requirements in Table 40 of this subpart.

(2) If you use a continuous emission monitoring system to meet the NSPS CO or SO_2 limit, you must conduct a performance evaluation of each continuous emission monitoring system according to the requirements in § 63.8 and Table 40 of this subpart. This requirement does not apply to an affected source subject to the NSPS that has already demonstrated initial compliance with the applicable performance specification.

(3) As specified in § 63.8(c)(4)(ii), each continuous emission monitoring system must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

(4) Data must be reduced as specified in § 63.8(g)(2).

(b) You must install, operate, and maintain each continuous opacity monitoring system according to the requirements in paragraphs (b)(1) through (3) of this section.

(1) Each continuous opacity monitoring system must be installed, operated, and maintained according to the requirements in Table 40 of this subpart.

(2) If you use a continuous opacity monitoring system to meet the NSPS opacity limit, you must conduct a performance evaluation of each continuous opacity monitoring system according to the requirements in § 63.8 and Table 40 of this subpart. This requirement does not apply to an affected source subject to the NSPS that has already demonstrated initial compliance with the applicable performance specification.

(3) As specified in § 63.8(c)(4)(i), each continuous opacity monitoring system must complete a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each successive 6-minute period.

(c) You must install, operate, and maintain each continuous parameter monitoring system according to the requirements in paragraphs (c)(1) through (7) of this section.

(1) Each continuous parameter monitoring system must be installed, operated, and maintained according to the requirements in Table 41 of this subpart and in a manner consistent with the manufacturer's specifications or other written procedures that provide adequate assurance that the equipment will monitor accurately.

(2) The continuous parameter monitoring system must complete a minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of four successive cycles of operation to have a valid hour of data (or at least two if a calibration check is performed during that hour or if the continuous parameter monitoring system is out-of-control).

(3) Each continuous parameter monitoring system must have valid hourly average data from at least 75 percent of the hours during which the process operated.

(4) Each continuous parameter monitoring system must determine and record the hourly average of all recorded readings and if applicable, the daily average of all recorded readings for each operating day. The daily average must cover a 24-hour period if operation is continuous or the number of hours of operation per day if operation is not continuous.

(5) Each continuous parameter monitoring system must record the results of each inspection, calibration, and validation check.

(d) You must monitor and collect data according to the requirements in paragraphs (d)(1) and (2) of this section.

(1) Except for monitoring malfunctions, associated repairs, and required quality assurance or control activities (including as applicable, calibration checks and required zero and span adjustments), you must conduct all monitoring in continuous operation (or collect data at all required intervals) at all times the affected source is operating.

(2) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities for purposes of this regulation, including data averages and calculations, for fulfilling a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing the operation of the control device and associated control system.

§ 63.1573 What are my monitoring alternatives?

(a) *What is the approved alternative for monitoring gas flow rate?* You can elect to use this alternative to a continuous parameter monitoring system for the catalytic regenerator exhaust gas flow rate for your catalytic cracking unit if the unit does not introduce any other gas streams into the catalyst regeneration vent (i.e., complete combustion units with no additional combustion devices). If you select this alternative, you must use the same procedure for the performance test and for monitoring after the performance test.

(1) Install and operate a continuous parameter monitoring system to measure and record the hourly average volumetric air flow rate to the catalytic cracking unit regenerator. Or, you can determine and record the hourly average volumetric air flow rate to the catalytic cracking unit regenerator using the catalytic cracking unit control room instrumentation.

(2) Install and operate a continuous parameter monitoring system to measure and record the temperature of the gases entering the control device (or exiting the catalyst regenerator if you do not use an add-on control device).

(3) Calculate and record the hourly average actual exhaust gas flow rate using Equation 1 of this section as follows:

$$Q_{gas} = (1.12\ \text{scfm/dscfm}) \times (Q_{air} + Q_{oxy}) \times \left(\frac{Temp_{gas}}{273°\,K}\right) \times \left(\frac{P_{vent}}{1\ \text{atm.}}\right) \qquad \text{(Eq. 1)}$$

Where:

Q_{gas} = Hourly average actual gas flow rate, acfm;

1.12 = Default correction factor to convert gas flow from dry standard cubic feet per minute (dscfm) to standard cubic feet per minute (scfm);

Q_{air} = Volumetric flow rate of air to regenerator, as determined from the catalytic cracking unit control room instrumentations, dscfm;

Q_{oxy} = Volumetric flow rate of oxygen-enriched air stream to regenerator, as determined from the catalytic cracking unit control room instrumentations, dscfm;

$Temp_{gas}$ = Temperature of gas stream in vent measured as near as practical to the control device or opacity monitor, °K. For wet scrubbers, temperature of gas prior to the wet scrubber; and

P_{vent} = Absolute pressure in the vent measured as near as practical to the control device or opacity monitor, atm. When used in conjunction with opacity in the final vent stack, you can assume P_{vent} = 1 atm.

(b) *What is the approved alternative for monitoring pH levels?* If you use a wet scrubber to control inorganic HAP emissions from your vent on a catalytic reforming unit, you can measure and record the pH of the water (or scrubbing liquid) exiting the scrubber at least once an hour during coke burn-off and catalyst rejuvenation using pH strips as an alternative to a continuous parameter monitoring system. The pH strips must meet the requirements in Table 41 of this subpart.

(c) *Can I use another type of monitoring system?* You may request approval from your permitting authority to use an automated data compression system. An automated data compression system does not record monitored operating parameter values at a set frequency (e.g., once every hour) but records all values that meet set criteria for variation from previously recorded values. Your request must contain a description of the monitoring system and data recording system, including the criteria used to determine which monitored values are recorded and retained, the method for calculating daily averages, and a demonstration that the system meets all of the criteria in paragraphs (c)(1) through (5) of this section:

(1) The system measures the operating parameter value at least once every hour;

(2) The system records at least 24 values each day during periods of operation;

(3) The system records the date and time when monitors are turned off or on;

(4) The system recognizes unchanging data that may indicate the monitor is not functioning properly, alerts the operator, and records the incident; and

(5) The system computes daily average values of the monitored operating parameter based on recorded data.

(d) *Can I monitor other process or control device operating parameters?* You may request approval to monitor parameters other than those required in this subpart. You must request approval if:

(1) You use a control device other than a thermal incinerator, boiler, process heater, flare, electrostatic precipitator, or wet scrubber;

(2) You use a combustion control device (e.g., incinerator, flare, boiler or process heater with a design heat capacity of at least 44 MW, boiler or process heater where the vent stream is introduced into the flame zone), electrostatic precipitator, or scrubber but want to monitor a parameter other than those specified; or

(3) You wish to use another type of continuous emission monitoring system that provides direct measurement of a pollutant (i.e., a PM or multi-metals HAP continuous emission monitoring system, a carbonyl sulfide/carbon disulfide continuous emission monitoring system, a TOC continuous emission monitoring system, or HCl continuous emission monitoring system).

(e) *How do I request to monitor alternative parameters?* You must submit a request for review and approval or disapproval to the Administrator. The request must include the information in paragraphs (e)(1) through (5) of this section.

(1) A description of each affected source and the parameter(s) to be monitored to determine whether the affected source will continuously comply with the emission limitations and an explanation of the criteria used to select the parameter(s).

(2) A description of the methods and procedures that will be used to demonstrate that the parameter can be used to determine whether the affected source will continuously comply with the emission limitations and the schedule for this demonstration. You must certify that you will establish an operating limit for the monitored parameter(s) that represents the conditions in existence when the control device is being properly operated and maintained to meet the emission limitation.

(3) The frequency and content of monitoring, recording, and reporting, if monitoring and recording are not continuous. You also must include the rationale for the proposed monitoring, recording, and reporting requirements.

(4) Supporting calculations.

(5) Averaging time for the alternative operating parameter.

Notifications, Reports, and Records

§ 63.1574 What notifications must I submit and when?

(a) Except as allowed in paragraphs (a)(1) through (3) of this section, you must submit all of the notifications in §§ 63.6(h), 63.7(b) and (c), 63.8(e), 63.8(f)(4), 63.8(f)(6), and 63.9(b) through (h) that apply to you by the dates specified.

(1) You must submit the notification of your intention to construct or reconstruct according to § 63.9(b)(5) unless construction or reconstruction had commenced and initial startup had not occurred before April 11, 2002. In this case, you must submit the notification as soon as practicable before startup but no later than July 10, 2002. This deadline also applies to the application for approval of construction or reconstruction and approval of construction or reconstruction based on State preconstruction review required in §§ 63.5(d)(1)(i) and 63.5(f)(2).

(2) You must submit the notification of intent to conduct a performance test required in § 63.7(b) at least 30 calendar days before the performance test is scheduled to begin (instead of 60 days).

(3) If you are required to conduct a performance test, performance evaluation, design evaluation, opacity observation, visible emission observation, or other initial compliance demonstration, you must submit a notification of compliance status according to § 63.9(h)(2)(ii). You can submit this information in an operating permit application, in an amendment to an operating permit application, in a separate submission, or in any combination. In a State with an approved operating permit program where delegation of authority under section 112(l) of the CAA has not been requested or approved, you must provide a duplicate notification to the applicable Regional Administrator. If the required information has been submitted previously, you do not have to provide a separate notification of compliance status. Just refer to the earlier submissions instead of duplicating and resubmitting the previously submitted information.

(i) For each initial compliance demonstration that does not include a performance test, you must submit the Notification of Compliance Status no later than 30 calendar days following completion of the initial compliance demonstration.

(ii) For each initial compliance demonstration that includes a performance test, you must submit the notification of compliance status, including the performance test results, no later than 150 calendar days after the compliance date specified for your affected source in § 63.1573.

(b) As specified in § 63.9(b)(2), if you startup your new affected source before April 11, 2002, you must submit the initial notification no later than August 9, 2002.

(c) As specified in § 63.9(b)(3), if you start your new or reconstructed affected source on or after April 11, 2002, you must submit the initial notification no

later than 120 days after you become subject to this subpart.

(d) You also must include the information in Table 42 of this subpart in your notification of compliance status.

(e) If you request an extension of compliance for an existing catalytic cracking unit as allowed in § 63.1563(c), you must submit a notification to your permitting authority containing the required information by October 13, 2003.

(f) As required by this subpart, you must prepare and implement an operation, maintenance, and monitoring plan for each affected source, control system, and continuous monitoring system. The purpose of this plan is to detail the operation, maintenance, and monitoring procedures you will follow.

(1) You must submit the plan to your permitting authority for review and approval along with your notification of compliance status. While you do not have to include the entire plan in your part 70 or 71 permit, you must include the duty to prepare and implement the plan as an applicable requirement in your part 70 or 71 operating permit. You must submit any changes to your permitting authority for review and approval and comply with the plan until the change is approved.

(2) Each plan must include, at a minimum, the information specified in paragraphs (f)(2)(i) through (x) of this section.

(i) Process and control device parameters to be monitored for each affected source, along with established operating limits.

(ii) Procedures for monitoring emissions and process and control device operating parameters for each affected source.

(iii) Procedures that you will use to determine the coke burn-rate, the volumetric flow rate (if you use process data rather than direct measurement), and the rate of combustion of liquid or solid fossil fuels if you use an incinerator-waste heat boiler to burn the exhaust gases from a catalyst regenerator.

(iv) Procedures and analytical methods you will use to determine the equilibrium catalyst Ni concentration, the equilibrium catalyst Ni concentration monthly rolling average, and the hourly or hourly average Ni operating value.

(v) Procedures you will use to determine the pH of the water (or scrubbing liquid) exiting a wet scrubber if you use pH strips.

(vi) Procedures you will use to determine the HCl concentration of gases from a semi-regenerative catalytic reforming unit with an internal scrubbing system (i.e., no add-on control device) when you use a colormetric tube sampling system, including procedures for correcting for pressure (if applicable to the sampling equipment).

(vii) Procedures you will use to determine the gas flow rate for a catalytic cracking unit if you use the alternative procedure based on air flow rate and temperature.

(viii) Monitoring schedule, including when you will monitor and when you will not monitor an affected source (e.g., during the coke burn-off, regeneration process).

(ix) Quality control plan for each continuous opacity monitoring system and continuous emission monitoring system you use to meet an emission limit in this subpart. This plan must include procedures you will use for calibrations, accuracy audits, and adjustments to the system needed to meet applicable requirements for the system.

(x) Maintenance schedule for each affected source, monitoring system, and control device that is generally consistent with the manufacturer's instructions for routine and long-term maintenance.

§ 63.1575 What reports must I submit and when?

(a) You must submit each report in Table 43 of this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule, you must submit each report by the date in Table 43 of this subpart and according to the requirements in paragraphs (b)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.1563 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your affected source in § 63.1563.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.1563.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to part 70 or 71 of this chapter, and if the permitting authority has established dates for submitting semiannual reports pursuant to § 70.6(a)(3)(iii)(A) or § 71.6(a)(3)(iii)(A) of this chapter, you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The compliance report must contain the information required in paragraphs (c)(1) through (4) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the accuracy of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If there are no deviations from any emission limitation that applies to you and there are no deviations from the requirements for work practice standards, a statement that there were no deviations from the emission limitations or work practice standards during the reporting period and that no continuous emission monitoring system or continuous opacity monitoring system was inoperative, inactive, malfunctioning, out-of-control, repaired, or adjusted.

(d) For each deviation from an emission limitation and for each deviation from the requirements for work practice standards that occurs at an affected source where you are not using a continuous opacity monitoring system or a continuous emission monitoring system to comply with the emission limitation or work practice standard in this subpart, the compliance report must contain the information in paragraphs (c)(1) through (3) of this section and the information in paragraphs (d)(1) through (3) of this section.

(1) The total operating time of each affected source during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(3) Information on the number, duration, and cause for monitor downtime incidents (including

unknown cause, if applicable, other than downtime associated with zero and span and other daily calibration checks).

(e) For each deviation from an emission limitation occurring at an affected source where you are using a continuous opacity monitoring system or a continuous emission monitoring system to comply with the emission limitation, you must include the information in paragraphs (d)(1) through (3) of this section and the information in paragraphs (e)(1) through (13) of this section.

(1) The date and time that each malfunction started and stopped.

(2) The date and time that each continuous opacity monitoring system or continuous emission monitoring system was inoperative, except for zero (low-level) and high-level checks.

(3) The date and time that each continuous opacity monitoring system or continuous emission monitoring system was out-of-control, including the information in § 63.8(c)(8).

(4) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(5) A summary of the total duration of the deviation during the reporting period (recorded in minutes for opacity and hours for gases and in the averaging period specified in the regulation for other types of emission limitations), and the total duration as a percent of the total source operating time during that reporting period.

(6) A breakdown of the total duration of the deviations during the reporting period and into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(7) A summary of the total duration of downtime for the continuous opacity monitoring system or continuous emission monitoring system during the reporting period (recorded in minutes for opacity and hours for gases and in the averaging time specified in the regulation for other types of standards), and the total duration of downtime for the continuous opacity monitoring system or continuous emission monitoring system as a percent of the total source operating time during that reporting period.

(8) A breakdown of the total duration of downtime for the continuous opacity monitoring system or continuous emission monitoring system during the reporting period into periods that are due to monitoring equipment malfunctions, non-monitoring equipment malfunctions, quality assurance/quality control calibrations, other known causes, and other unknown causes.

(9) An identification of each HAP that was monitored at the affected source.

(10) A brief description of the process units.

(11) The monitoring equipment manufacturer(s) and model number(s).

(12) The date of the latest certification or audit for the continuous opacity monitoring system or continuous emission monitoring system.

(13) A description of any change in the continuous emission monitoring system or continuous opacity monitoring system, processes, or controls since the last reporting period.

(f) You also must include the information required in paragraphs (f)(1) through (2) of this section in each compliance report, if applicable.

(1) A copy of any performance test done during the reporting period on any affected unit. The report may be included in the next semiannual report. The copy must include a complete report for each test method used for a particular kind of emission point tested. For additional tests performed for a similar emission point using the same method, you must submit the results and any other information required, but a complete test report is not required. A complete test report contains a brief process description; a simplified flow diagram showing affected processes, control equipment, and sampling point locations; sampling site data; description of sampling and analysis procedures and any modifications to standard procedures; quality assurance procedures; record of operating conditions during the test; record of preparation of standards; record of calibrations; raw data sheets for field sampling; raw data sheets for field and laboratory analyses; documentation of calculations; and any other information required by the test method.

(2) Any requested change in the applicability of an emission standard (e.g., you want to change from the PM standard to the Ni standard for catalytic cracking units or from the HCl concentration standard to percent reduction for catalytic reforming units) in your periodic report. You must include all information and data necessary to demonstrate compliance with the new emission standard selected and any other associated requirements.

(g) You may submit reports required by other regulations in place of or as part of the compliance report if they contain the required information.

(h) The reporting requirements in paragraphs (h)(1) and (2) of this section apply to startups, shutdowns, and malfunctions:

(1) When actions taken to respond are consistent with the plan, you are not required to report these events in the semiannual compliance report and the reporting requirements in §§ 63.6(e)(3)(iii) and 63.10(d)(5) do not apply.

(2) When actions taken to respond are not consistent with the plan, you must report these events and the response taken in the semiannual compliance report. In this case, the reporting requirements in §§ 63.6(e)(3)(iv) and 63.10(d)(5) do not apply.

(i) If the applicable permitting authority has approved a period of planned maintenance for your catalytic cracking unit according to the requirements in paragraph (j) of this section, you must include the following information in your compliance report.

(1) In the compliance report due for the 6-month period before the routine planned maintenance is to begin, you must include a full copy of your written request to the applicable permitting authority and written approval received from the applicable permitting authority.

(2) In the compliance report due after the routine planned maintenance is complete, you must include a description of the planned routine maintenance that was performed for the control device during the previous 6-month period, and the total number of hours during those 6 months that the control device did not meet the emission limitations and monitoring requirements as a result of the approved routine planned maintenance.

(j) If you own or operate multiple catalytic cracking units that are served by a single wet scrubber emission control device (e.g., a Venturi scrubber), you may request the applicable permitting authority to approve a period of planned routine maintenance for the control device needed to meet requirements in your operation, maintenance, and monitoring plan. You must present data to the applicable permitting authority demonstrating that the period of planned maintenance results in overall emissions reductions. During this pre-approved time period, the emission control device may be taken out of service while maintenance is performed on the control device and/or one of the process units while the remaining process unit(s) continue to operate. During the period the emission control device is unable to operate, the emission limits, operating limits, and monitoring requirements applicable to the unit that is operating and the wet scrubber emission control device do not

apply. The applicable permitting authority may require that you take specified actions to minimize emissions during the period of planned maintenance.

(1) You must submit a written request to the applicable permitting authority at least 6 months before the planned maintenance is scheduled to begin with a copy to the EPA Regional Administrator.

(2) Your written request must contain the information in paragraphs (j)(2)(i) through (v) of this section.

(i) A description of the planned routine maintenance to be performed during the next 6 months and why it is necessary.

(ii) The date the planned maintenance will begin and end.

(iii) A quantified estimate of the HAP and criteria pollutant emissions that will be emitted during the period of planned maintenance.

(iv) An analysis showing the emissions reductions resulting from the planned maintenance as opposed to delaying the maintenance until the next unit turnaround.

(v) Actions you will take to minimize emissions during the period of planned maintenance.

§ 63.1576 What records must I keep, in what form, and for how long?

(a) You must keep the records specified in paragraphs (a)(1) through (3) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any initial notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(1)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests, performance evaluations, and opacity and visible emission observations as required in § 63.10(b)(2)(viii).

(b) For each continuous emission monitoring system and continuous opacity monitoring system, you must keep the records required in paragraphs (b)(1) through (5) of this section.

(1) Records described in § 63.10(b)(2)(vi) through (xi).

(2) Monitoring data for continuous opacity monitoring systems during a performance evaluation as required in § 63.6(h)(7)(i) and (ii).

(3) Previous (i.e., superceded) versions of the performance evaluation plan as required in § 63.8(d)(3).

(4) Requests for alternatives to the relative accuracy test for continuous emission monitoring systems as required in § 63.8(f)(6)(i).

(5) Records of the date and time that each deviation started and stopped, and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(c) You must keep the records in § 63.6(h) for visible emission observations.

(d) You must keep records required by Tables 6, 7, 13, and 14 of this subpart (for catalytic cracking units); Tables 20, 21, 27 and 28 of this subpart (for catalytic reforming units); Tables 34 and 35 of this subpart (for sulfur recovery units); and Table 39 of this subpart (for bypass lines) to show continuous compliance with each emission limitation that applies to you.

(e) You must keep a current copy of your operation, maintenance, and monitoring plan onsite and available for inspection. You also must keep records to show continuous compliance with the procedures in your operation, maintenance, and monitoring plan.

(f) You also must keep the records of any changes that affect emission control system performance including, but not limited to, the location at which the vent stream is introduced into the flame zone for a boiler or process heater.

(g) Your records must be in a form suitable and readily available for expeditious review according to § 63.10(b)(1).

(h) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(i) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.1577 What parts of the General Provisions apply to me?

Table 44 of this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.1578 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that Agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (5) of this section.

(1) Approval of alternatives to the non-opacity emission limitations and work practice standards in §§ 63.1564 through 63.1569 under § 63.6(g).

(2) Approval of alternative opacity emission limitations in §§ 63.1564 through 63.1569 under § 63.6(h)(9).

(3) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(4) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(5) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.1579 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act (CAA), in 40 CFR 63.2, the General Provisions of this part (§§ 63.1 through 63.15), and in this section as listed.

Boiler means any enclosed combustion device that extracts useful energy in the form of steam and is not an incinerator.

Catalytic cracking unit means a refinery process unit in which petroleum derivatives are continuously charged; hydrocarbon molecules in the presence of a catalyst suspended in a fluidized bed are fractured into smaller molecules, or react with a contact material suspended in a fluidized bed to improve feedstock quality for additional processing; and the catalyst or contact material is continuously regenerated by burning off coke and other deposits. The unit includes, but is not limited to, the riser, reactor, regenerator, air blowers, spent catalyst or contact material stripper, catalyst or contact material recovery equipment, and regenerator equipment for controlling air pollutant emissions and equipment used for heat recovery.

Catalytic cracking unit catalyst regenerator means one or more regenerators (multiple regenerators) which comprise that portion of the catalytic cracking unit in which coke burn-off and catalyst or contact material

regeneration occurs and includes the regenerator combustion air blower(s).

Catalytic reforming unit means a refinery process unit that reforms or changes the chemical structure of naphtha into higher octane aromatics through the use of a metal catalyst and chemical reactions that include dehydrogenation, isomerization, and hydrogenolysis. The catalytic reforming unit includes the reactor, regenerator (if separate), separators, catalyst isolation and transport vessels (e.g., lock and lift hoppers), recirculation equipment, scrubbers, and other ancillary equipment.

Catalytic reforming unit regenerator means one or more regenerators which comprise that portion of the catalytic reforming unit and ancillary equipment in which the following regeneration steps typically are performed: depressurization, purge, coke burn-off, catalyst rejuvenation with a chloride (or other halogenated) compound(s), and a final purge. The catalytic reforming unit catalyst regeneration process can be done either as a semi-regenerative, cyclic, or continuous regeneration process.

Coke burn-off means the coke removed from the surface of the catalytic cracking unit catalyst or the catalytic reforming unit catalyst by combustion in the catalyst regenerator. The rate of coke burn-off is calculated using Equation 2 in § 63.1564.

Combustion device means an individual unit of equipment such as a flare, incinerator, process heater, or boiler used for the destruction of organic HAP or VOC.

Combustion zone means the space in an enclosed combustion device (e.g., vapor incinerator, boiler, furnace, or process heater) occupied by the organic HAP and any supplemental fuel while burning. The combustion zone includes any flame that is visible or luminous as well as that space outside the flame envelope in which the organic HAP continues to be oxidized to form the combustion products.

Contact material means any substance formulated to remove metals, sulfur, nitrogen, or any other contaminants from petroleum derivatives.

Continuous regeneration reforming means a catalytic reforming process characterized by continuous flow of catalyst material through a reactor where it mixes with feedstock, and a portion of the catalyst is continuously removed and sent to a special regenerator where it is regenerated and continuously recycled back to the reactor.

Control device means any equipment used for recovering, removing, or oxidizing HAP in either gaseous or solid form. Such equipment includes, but is not limited to, condensers, scrubbers, electrostatic precipitators, incinerators, flares, boilers, and process heaters.

Cyclic regeneration reforming means a catalytic reforming process characterized by continual batch regeneration of catalyst in situ in any one of several reactors (e.g., 4 or 5 separate reactors) that can be isolated from and returned to the reforming operation while maintaining continuous reforming process operations (i.e., feedstock continues flowing through the remaining reactors without change in feed rate or product octane).

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limit, operating limit, or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limit, operating limit, or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Emission limitation means any emission limit, opacity limit, operating limit, or visible emission limit.

Flame zone means the portion of a combustion chamber of a boiler or process heater occupied by the flame envelope created by the primary fuel.

Flow indicator means a device that indicates whether gas is flowing, or whether the valve position would allow gas to flow, in or through a line.

Fuel gas system means the offsite and onsite piping and control system that gathers gaseous streams generated by the source, may blend them with sources of gas, if available, and transports the blended gaseous fuel at suitable pressures for use as fuel in heaters, furnaces, boilers, incinerators, gas turbines, and other combustion devices located within or outside of the refinery. The fuel is piped directly to each individual combustion device, and the system typically operates at pressures over atmospheric. The gaseous streams can contain a mixture of methane, light hydrocarbons, hydrogen, and other miscellaneous species.

HCl means for the purposes of this subpart, gaseous emissions of hydrogen chloride that serve as a surrogate measure for total emissions of hydrogen chloride and chlorine as measured by Method 26 or 26A in appendix A to part 60 of this chapter or an approved alternative method.

Incinerator means an enclosed combustion device that is used for destroying organic compounds, with or without heat recovery. Auxiliary fuel may be used to heat waste gas to combustion temperatures. An incinerator may use a catalytic combustion process where a substance is introduced into an exhaust stream to burn or oxidize contaminants while the substances itself remains intact, or a thermal process which uses elevated temperatures as a primary means to burn or oxidize contaminants.

Ni means, for the purposes of this subpart, particulate emissions of nickel that serve as a surrogate measure for total emissions of metal HAP, including but not limited to: antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, nickel, and selenium as measured by Method 29 in appendix A to part 60 of this chapter or by an approved alternative method.

Oxidation control system means an emission control system which reduces emissions from sulfur recovery units by converting these emissions to sulfur dioxide.

PM means, for the purposes of this subpart, emissions of particulate matter that serve as a surrogate measure of the total emissions of particulate matter and metal HAP contained in the particulate matter, including but not limited to: antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, nickel, and selenium as measured by Methods 5B or 5F in appendix A to part 60 of this chapter or by an approved alternative method.

Process heater means an enclosed combustion device that primarily transfers heat liberated by burning fuel directly to process streams or to heat transfer liquids other than water.

Process vent means, for the purposes of this subpart, a gas stream that is continuously or periodically discharged during normal operation of a catalytic cracking unit, catalytic reforming unit, or sulfur recovery unit, including gas streams that are discharged directly to the atmosphere, gas streams that are routed to a control device prior to discharge to the atmosphere, or gas streams that are diverted through a product recovery device line prior to control or discharge to the atmosphere.

Reduced sulfur compounds means hydrogen sulfide, carbonyl sulfide, and carbon disulfide.

Reduction control system means an emission control system which reduces emissions from sulfur recovery units by converting these emissions to hydrogen sulfide.

Responsible official means responsible official as defined in 40 CFR 70.2.

Semi-regenerative reforming means a catalytic reforming process characterized by shutdown of the entire reforming unit (e.g., which may employ three to four separate reactors) at specified intervals or at the owner's or operator's convenience for in situ catalyst regeneration.

Sulfur recovery unit means a process unit that recovers elemental sulfur from gases that contain reduced sulfur compounds and other pollutants, usually by a vapor-phase catalytic reaction of sulfur dioxide and hydrogen sulfide. This definition does not include a unit where the modified reaction is carried out in a water solution which contains a metal ion capable of oxidizing the sulfide ion to sulfur, e.g., the LO–CAT II process.

TOC means, for the purposes of this subpart, emissions of total organic compounds, excluding methane and ethane, that serve as a surrogate measure of the total emissions of organic HAP compounds, including but not limited to, acetaldehyde, benzene, hexane, phenol, toluene, and xylenes and non-HAP VOC as measured by Method 25 or 25A in appendix A to part 60 of this chapter or an approved alternative method.

TRS means, for the purposes of this subpart, emissions of total reduced sulfur compounds, expressed as an equivalent sulfur dioxide concentration, that serve as a surrogate measure of the total emissions of sulfide HAP carbonyl sulfide and carbon disulfide as measured by Method 15 in appendix A to part 60 of this chapter or by an approved alternative method.

Work practice standard means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the CAA.

TABLE 1 TO SUBPART UUU OF PART 63.—METAL HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS

[As stated in § 63.1564(a)(1), you must meet each emission limitation in the following table that applies to you]

For each new or existing catalytic cracking unit * * *	You must meet the following emission limits for each catalyst regenerator vent * * *
1. Subject to the new source performance standard (NSPS) for PM in 40 CFR 60.102.	PM emissions must not exceed 1.0 kilogram (kg) per 1,000 kg (1.0 lb/1,000 lb) of coke burn-off in the catalyst regenerator; if the discharged gases pass through an incinerator or waste heat boiler in which you burn auxiliary or supplemental liquid or solid fossil fuel, you must limit the incremental rate of PM to no more than 43.0 grams per Megajoule (g/MJ) or 0.10 pounds per million British thermal units (lb/million Btu) of heat input attributable to the liquid or solid fossil fuel; and the opacity of emissions must not exceed 30 percent, except for one 6-minute average opacity reading in any 1-hour period.
2. Option 1: NSPS requirements not subject to the NSPS for PM in 40 CFR 60.102.	PM emissions must not exceed 1.0 kg/1,000 kg (1.0 lb/1,000 lb) of coke burn-off in the catalyst regenerator; if the discharged gases pass through an incinerator or waste heat boiler in which you burn auxiliary or in supplemental liquid or solid fossil fuel, you must limit the incremental rate of PM to no more than 43.0 g/MJ or lb/million Btu of heat input attributable to the liquid or solid fossil fuel; and the opacity of emissions must not exceed 30 percent, except for one 6-minute average opacity reading in any 1-hour period.
3. Option 2: PM limit not subject to the NSPS for PM in 40 CFR 60.102.	PM emissions must not exceed 1.0 kg/1,000 kg (1.0 lb/1,000 lbs) of coke burn-off in the catalyst regenerator.
4. Option 3: Ni lb/hr not subject to the NSPS for PM in 40 CFR 60.102.	Nickel (Ni) emissions must not exceed 13,000 milligrams per hour (mg/hr) (0.029 lb/hr).
5. Option 4: Ni Lb/1,000 lbs of coke burn-off not subject to the NSPS for PM in 40 CFR 60.102.	Ni emissions must not exceed 1.0 mg/kg (0.001 lb/1,000 lbs) of coke burn-off in the catalyst regenerator.

TABLE 2 TO SUBPART UUU OF PART 63.—OPERATING LIMITS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS

[As stated in § 63.1564(a)(2), you must meet each operating limit in the following table that applies to you]

For each new or existing catalytic cracking unit * * *	For this type of continuous monitoring system * * *	For this type of control device * * *	You must meet this operating limit * * *
1. Subject to the NSPS for PM in 40 CFR 60.102.	Continuous opacity monitoring system.	Not applicable	Not applicable.
2. Option 1: NSPS requirements not subject to the NSPS for PM in 40 CFR 60.102.	Continuous opacity monitoring system.	Not applicable	Not applicable.
3. Option 2: PM limit not subject to the NSPS for PM in 40 CFR 60.102.	a. Continuous opacity monitoring system.	Electrostatic precipitator	Maintain the hourly average opacity of emissions from your catalyst regenerator vent no higher than the site-specific opacity limit established during the performance test.

TABLE 2 TO SUBPART UUU OF PART 63.—OPERATING LIMITS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

[As stated in § 63.1564(a)(2), you must meet each operating limit in the following table that applies to you]

For each new or existing catalytic cracking unit * * *	For this type of continuous monitoring system * * *	For this type of control device * * *	You must meet this operating limit * * *
	b. Continuous parameter monitoring systems.	Electrostatic precipitator	Maintain the daily average gas flow rate no higher than the limit established in the performance test; and maintain the daily average voltage and secondary current (or total power input) above the limit established in the performance test.
	c. Continuous parameter monitoring systems.	Wet scrubber	Maintain the daily average pressure drop above the limit established in the performance test (not applicable to a wet scrubber of the non-venturi jet-ejector design); and maintain the daily average liquid-to-gas ratio above the limit established in the performance test.
4. Option 3: Ni lb/hr not subject to the NSPS for PM in 40 CFR 60.102.	a. Continuous opacity monitoring system.	Electrostatic precipitator	Maintain the daily average Ni operating value no higher than the limit established during the performance test.
	b. Continuous parameter monitoring systems.	i. Electrostatic precipitator	Maintain the daily average gas flow rate no higher than the limit established during the performance test; maintain the monthly rolling average of the equilibrium catalyst Ni concentration no higher than the limit established during the performance test; and maintain the daily average voltage and secondary current (or total power input) above the established during the performance test.
		ii. Wet scrubber	Maintain the monthly rolling average of the equilibrium catalyst Ni concentration no higher than the limit established during the performance test; maintain the daily average pressure drop above the limit established during the performance test (not applicable to a non-venturi wet scrubber of the jet-ejector design); and maintain the daily average liquid-to-gas ratio above the limit established during the performance test.
5. Option 4: Ni lb/1,000 lbs of coke burn-off not subject to the NSPS for PM in 40 CFR 60.102.	a. Continuous opacity monitoring system	Electrostatic precipitator	Maintain the daily average Ni operating value no higher than the Ni operating limit established during the performance test.
	b. Continuous parameter monitoring systems.	i. Electrostatic precipitator	Maintain the monthly rolling average of the equilibrium catalyst Ni concentration no higher than the limit established during the performance test; and maintain the daily average voltage and secondary current for total power input) above the limit established during the performance test.

TABLE 2 TO SUBPART UUU OF PART 63.—OPERATING LIMITS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

[As stated in § 63.1564(a)(2), you must meet each operating limit in the following table that applies to you]

For each new or existing catalytic cracking unit * * *	For this type of continuous monitoring system * * *	For this type of control device * * *	You must meet this operating limit * * *
		ii. Wet scrubber	Maintain the monthly rolling average of the equilibrium catalyst Ni concentration no higher than the limit established during the performance test; maintain the daily average pressure drop above the limit established during the performance test (not applicable to a non-venturi wet scrubber of the jet-ejector design); and maintain the daily average liquid-to-gas ratio above the limit established during the performance test.

TABLE 3 TO SUBPART UUU OF PART 63.—CONTINOUS MONITORING SYSTEMS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS

[As stated in § 63.1564(b)(1), you must meet each requirement in the following table that applies to you]

For each new or existing catalytic cracking unit * * *	If your catalytic cracking unit is * * *	And you use this type of control device for your vent * * *	You must install, operate, and maintain a * * *
1. Subject to the NSPS for PM in 40 CFR 60.102.	Any size	Electrostatic precipitator or wet scrubber or no control device.	Continous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent.
2. Option 1: NSPS limits not subject to the NSPS for PM in 40 CFR 60.102.	Any size	Electrostatic precipitator or wet scrubber or no control device.	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent.
3. Option 2: PM limit not subject to the NSPS for PM in 40 CFR 60.102.	a. Over 20,000 barrels per day fresh feed capacity.	Electrostatic precipitator	Continous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent.
	b. Up to 20,000 barrels per day fresh feed capacity.	Electrostatic precipitator	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent; or continuous parameter monitoring systems to measure and record the gas flow rate to the control device and the voltage and secondary current (or total power input) to the control device.
	c. Any size	i. Wet scrubber	(1) Continuous parameter monitoring system to measure and record the pressure drop across the scrubber, gas flow rate to the scrubber, and total liquid (or scrubbing liquor) flow rate to the scrubber. (2) If you use a wet scrubber of the non-venturi jet-ejector design, you're not required to install and operate a continuous parameter monitoring system for pressure drop.
	d. Any size	No electrostatic precipitator or wet scrubber.	Continous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent.

TABLE 3 TO SUBPART UUU OF PART 63.—CONTINOUS MONITORING SYSTEMS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

[As stated in § 63.1564(b)(1), you must meet each requirement in the following table that applies to you]

For each new or existing catalytic cracking unit * * *	If your catalytic cracking unit is * * *	And you use this type of control device for your vent * * *	You must install, operate, and maintain a * * *
4. Option 3: Ni lb/hr not subject to the NSPS for PM in 40 CFR 60.102.	a. Over 20,000 barrels per day fresh feed capacity.	Electrostatic precipitator	Continous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent and continuous parameter monitoring system to measure and record the gas flow rate.
	b. Up to 20,000 barrels per day fresh feed capacity.	Electrostatic precipitator	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent and continuous parameter monitoring system to measure and record the gas flow rate; or continuous parameter monitoring systems to measure and record the gas flow rate and the voltage and secondary current (or total power input) to the control device.
	c. Any size	Wet scrubber	(1) Continuous parameter monitoring system to measure and record the pressure drop across the scrubber, gas flow rate to the scrubber, and total liquid (or scrubbing liquor) flow rate to the scrubber. (2) If you use a wet scrubber of the non-venturi jet-ejector, design, you're not required to install and operate a continuous parameter monitoring system for pressure drop.
	d. Any size	No electrostatic precipitator or wet scrubber.	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent and continuous parameter monitoring system to measure and record the gas flow rate.
5. Option 4: Ni lb/1,000 lbs of coke burn-off not subject to the NSPS for PM in 40 CFR 60.102.	a. Over 20,000 barrels per day fresh feed capacity.	Electrostatic precipitator	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent and continuous parameter monitoring system to measure and record the gas flow rate.
	b. Up to 20,000 barrels per day fresh feed capacity.	Electrostatic precipitator	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent and continuous parameter monitoring system to measure and record the gas flow rate; or continuous parameter monitoring systems to measure and record the gas flow rate and the voltage and secondary current (or total power input) to the control device.
	c. Any size	Wet scrubber	Continuous parameter monitoring system to measure and record the pressure drop across the scrubber, gas flow rate to the scrubber, and total liquid (or scrubbing liquor) flow rate to the scrubber.

TABLE 3 TO SUBPART UUU OF PART 63.—CONTINOUS MONITORING SYSTEMS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

[As stated in § 63.1564(b)(1), you must meet each requirement in the following table that applies to you]

For each new or existing catalytic cracking unit * * *	If your catalytic cracking unit is * * *	And you use this type of control device for your vent * * *	You must install, operate, and maintain a * * *
	d. Any size	No electrostatic precipitator or wet scrubber	Continuous opacity monitoring system to measure and record the opacity of emissions from each catalyst regenerator vent and continuous parameter monitoring system to measure and record the gas flow rate.

TABLE 4 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS NOT SUBJECT TO THE NEW SOURCE PERFORMANCE STANDARD (NSPS) FOR PARTICULATE MATTER (PM)

[As stated in § 63.1564(b)(2), you must meet each requirement in the following table that applies to you]

For each new or existing catalytic cracking unit catalyst regenerator vent * * *	You must * * *	Using * * *	According to these requirements * * *
1. If you elect Option 1 in item 2 of Table 1, Option 2 in item 3 of Table 1, Option 3 in item 4 of Table 1, or Option 4 in item 5 of Table 1 of this subpart.	a. Select sampling port's location and the number of traverse ports.	Method 1 or 1A in appendix A to part 60 of this chapter.	Sampling sites must be located at the outlet of the control device or the outlet of the regenerator, as applicable, and prior to any releases to the atmosphere.
	b. Determine velocity and volumetric flow rate.	Method 2, 2A, 2C, 2D, 2F, or 2G in appendix A to part 60 of this chapter, as applicable.	
	c. Conduct gas molecular weight analysis.	Method 3, 3A, or 3B in appendix A to part 60 of this chapter, as applicable.	
	d. Measure moisture content of the stack gas.	Method 4 in appendix A to part 60 of this chapter.	
	e. If you use an electro-static precipitator, record the total number of fields in the control system and how many operated during the applicable performance test.		
	f. If you use a wet scrubber, record the total amount (rate) of water (or scrubbing liquid) and the amount (rate) of make-up liquid to the scrubber during each test run.		
2. Option 1: Elect NSPS	a. Measure PM emissions	Method 5B or 5F (40 CFR part 60, appendix A) to determine PM emissions and associated moisture content for units without wet scrubbers. Method 5B (40 CFR part 60, appendix A) to determine PM emissions and associated moisture content for unit with wet scrubber.	You must maintain a sampling rate of at least 0.15 dry standard cubic meters per minute (dscm/min) (0.53 dry standard cubic feet per minute (dscf/min)).
	b. Compute PM emission rate (lbs/1,000 lbs) of coke burn-off.	Equations 1, 2, and 3 of § 63.1564 (if applicable).	
	c. Measure opacity of emissions.	Continuous opacity monitoring system.	You must collect opacity monitoring data every 10 seconds during the entire period of the initial Method 5 performance test and reduce the data to 6-minute averages.
3. Option 2: PM limit	a. Measure PM emissions	See item 2. of this table	See item 2. of this table.
	b. Compute coke burn-off rate and PM emission rate.	Equations 1 and 2 of § 63.1564	

TABLE 4 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS NOT SUBJECT TO THE NEW SOURCE PERFORMANCE STANDARD (NSPS) FOR PARTICULATE MATTER (PM)—Continued

[As stated in § 63.1564(b)(2), you must meet each requirement in the following table that applies to you]

For each new or existing catalytic cracking unit catalyst regenerator vent * * *	You must * * *	Using * * *	According to these requirements * * *
	c. Establish your site-specific opacity operating limit if you use a continuous opacity monitoring system.	Data from the continuous opacity monitoring system.	You must collect opacity monitoring data every 10 seconds during the entire period of the initial Method 5 performance test and reduce the data to 6-minute averages; determine and record the hourly average opacity from all the 6-minute averages; and compute the site-specific limit using Equation 4 of § 63.1564.
4. Option 3: Ni lb/hr	a. Measure concentration of Ni and total metal HAP.	Method 29 (40 CFR part 60, appendix A).	You must maintain a sampling rate of at least 0.028 dscm/min (0.74 dscf/min).
	b. Compute Ni emission rate (lb/hr).	Equation 5 of § 63.1564	
	c. Determine the equilibrium catalyst Ni concentration.	EPA Method 6010B or 6020 or EPA Method 7520 or 7521 in SW–846 [1]; or, you can use an alternative method satisfactory to the Administrator.	You must obtain 1 sample for each of the 3 runs; determine and record the average equilibrium catalyst Ni concentration for each of the 3 runs; and you may adjust the results for an individual run to the maximum value using Equation 1 of § 63.1571.
	d. If you use a continuous opacity monitoring system, establish your site-specific Ni operating limit.	i. Equations 6 and 7 of § 63.1564 using data from continuous opacity monitoring system, gas flow rate, results of equilibrium catalyst Ni concentration analysis, and Ni emission rate from Method 29 test.	(1) You must collect opacity monitoring data every 10 seconds during the entire period of the initial Ni performance test; reduce the data to 6-minute averages; and determine and record the hourly average opacity from all the 6-minute averages. (2) You must collect gas flow rate monitoring data every 15 minutes during the entire period of the initial Ni performance test; measure the gas flow as near as practical to the continuous opacity monitoring system; and determine and record the hourly average actual gas flow rate from all the readings.
5. Option 4: Ni lbs/1,000 lbs of coke burn-off.	a. Measure concentration of Ni and total metal HAP.	Method 29 (40 CFR part 60, appendix A).	You must maintain a sampling rate of at least 0.028 dscm/min (0.74 dscf/min).
	b. Compute Ni emission rate (lb/1,000 lbs of coke burn-off).	Equations 1 and 8 of § 63.1564.	
	c. Determine the equilibrium catalyst Ni concentration.	EPA Method 6010B or 6020 or EPA Method 7520 or 7521 (SW–846) [1]; or, you can use an alternative method satisfactory to the Administrator.	You must obtain 1 sample for each of the 3 runs; determine and record the equilibrium catalyst Ni concentration for each of the 3 samples; and you may adjust the laboratory results to the maximum value using Equation 2 of § 63.1571.

TABLE 4 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS NOT SUBJECT TO THE NEW SOURCE PERFORMANCE STANDARD (NSPS) FOR PARTICULATE MATTER (PM)—Continued

[As stated in § 63.1564(b)(2), you must meet each requirement in the following table that applies to you]

For each new or existing catalytic cracking unit catalyst regenerator vent * * *	You must * * *	Using * * *	According to these requirements * * *
	d. If you use a continuous opacity monitoring system, establish your site-specific Ni operating limit.	i. Equations 9 and 10 of § 63.1564 with data from continuous opacity monitoring system, coke burn-off rate, gas flow rate, results of equilibrium catalyst Ni concentration analysis, and Ni emission rate from Method 29 test.	(1) You must collect opacity monitoring data every 10 seconds during the entire period of the initial Ni performance test; reduce the data to 6-minute averages; and determine and record the hourly average opacity from all the 6-minute averages. (2) You must collect gas flow rate monitoring data every 15 minutes during the entire period of the initial Ni performance test; measure the gas flow rate as near as practical to the continuous opacity monitoring system; and determine and record the hourly average actual gas flow rate from all the readings.
	e. Record the catalyst addition rate for each test and schedule for the 10-day period prior to the test.		
6. If you elect Option 2 in Entry 3 in Table 1, Option 3 in Entry 4 in Table 1, or Option 4 in Entry 5 in Table 1 of this subpart and you use continuous parameter monitoring systems.	a. Establish each operating limit in Table 2 of this subpart that applies to you.	Data from the continuous parameter monitoring systems and applicable performance test methods.	
	b. Electrostatic precipitator or wet scrubber: gas flow rate.	Data from the continuous parameter monitoring systems and applicable performance test methods.	You must collect gas flow rate monitoring data every 15 minutes during the entire period of the initial performance test; and determine and record the maximum hourly average gas flow rate from all the readings.
	c. Electrostatic precipitator: voltage and secondary current (or total power input).	Data from the continuous parameter monitoring systems and applicable performance test methods.	You must collect voltage and secondary current (or total power input) monitoring data every 15 minutes during the entire period of the initial performance test; and determine and record the minimum hourly average voltage and secondary current (or total power input) from all the readings.
	d. Electrostatic precipitator or wet scrubber: equilibrium catalyst Ni concentration.	Results of analysis for equilibrium catalyst Ni concentration.	You must determine and record the average equilibrium catalyst Ni concentration for the 3 runs based on the laboratory results. You may adjust the value using Equation 1 or 2 of § 63.1571 as applicable.
	e. Wet scrubber: pressure drop (not applicable to non-venturi scrubber of jet ejector design).	Data from the continuous parameter monitoring systems and applicable performance test methods.	You must collect pressure drop monitoring data every 15 minutes during the entire period of the initial performance test; and determine and record the minimum hourly average pressure drop from all the readings.

TABLE 4 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS NOT SUBJECT TO THE NEW SOURCE PERFORMANCE STANDARD (NSPS) FOR PARTICULATE MATTER (PM)—Continued

[As stated in § 63.1564(b)(2), you must meet each requirement in the following table that applies to you]

For each new or existing catalytic cracking unit catalyst regenerator vent * * *	You must * * *	Using * * *	According to these requirements * * *
	f. Wet scrubber: liquid-to-gas ratio	Data from the continuous parameter monitoring systems and applicable performance test methods.	You must collect gas flow rate and total water (or scrubbing liquid) flow rate monitoring data every 15 minutes during the entire period of the initial performance test; determine and record the hourly average gas flow rate and total water (or scrubbing liquid) flow rate from all the readings; and determine and record the minimum liquid-to-gas ratio.
	g. Alternative procedure for gas flow rate.	Data from the continuous parameter monitoring systems and applicable performance test methods.	You must collect air flow rate monitoring data or determine the air flow rate using control room instrumentation every 15 minutes during the entire period of the initial performance test; determine and record the hourly average rate of all the readings; and determine and record the maximum gas flow rate using Equation 1 of § 63.1573.

[1] EPA Method 6010B, Inductively Coupled Plasma-Atomic Emission Spectrometry, EPA Method 6020, Inductively Coupled Plasma-Mass Spectrometry, EPA Method 7520, Nickel Atomic Absorption, Direct Aspiration, and EPA Method 7521, Nickel Atomic Absorption, Direct Aspiration are included in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, Revision 5 (April 1998). The SW–846 and Updates (document number 955–001–00000–1) are available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800; and from the National Technical Information Services (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487–4650. Copies may be inspected at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC; or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

TABLE 5 TO SUBPART UUU OF PART 63.—INITIAL COMPLIANCE WITH METAL HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS

[As stated in § 63.1564(b)(5), you must meet each requirement in the following table that applies to you]

For each new and existing catalytic cracking unit catalyst regenerator vent * * *	For the following emission limit * * *	You have demonstrated initial compliance if * * *
1. Subject to the NSPS for PM in 40 CFR 60.102.	PM emissions must not exceed 1.0 kg/1,000 kg (1.0 lb/1,000 lb) of coke burn-off in the catalyst regenerator; if the discharged gases pass through an incinerator or waste heat boiler in which you burn auxiliary or supplemental liquid or solid fossil fuel, you must limit the incremental rate of PM to no more than 43.0 grams per Megajoule (g/MJ) or 0.10 pounds per million British thermal units (lb/million Btu) of heat input attributable to the liquid or solid fossil fuel; and the opacity of emissions 30 percent, except for one 6-minute average opacity reading in any 1-hour period.	You have already conducted a performance test to demonstrate initial compliance with the NSPS and the measured PM emission rate is less than or equal to 1.0 kg/1,000 kg (1.0 lb/1,000 lb) of coke burn-off in the catalyst regenerator. As part of the Notification of Compliance Status, you must certify that your vent meets the PM limit. You are not required to do another performance test to demonstrate initial compliance. If applicable, you have already conducted a performance test to demonstrate initial compliance with the NSPS and the measured PM rate is less than or equal to 43.0 g/MJ or 0.010 lb/million Btu of heat input attributable to the liquid or solid fossil fuel. As part of the Notification of Compliance Status, you must certify that your vent meets the PM emission limit. You are not required to do another performance test to demonstrate initial compliance. You have already conducted a performance test to demonstrate initial compliance with the NSPS and the average hourly opacity of emissions is no more than 30 percent. Except: one 6-minute average in any 1-hour period can exceed 30 percent. As part of the Notification of Compliance Status, you must certify that your vent meets the opacity limit. You are not required to do another performance test to demonstrate initial compliance. You have already conducted a performance evaluation to demonstrate initial compliance with the applicable performance specification. As part of your Notification of Compliance Status, you certify that your continuous opacity monitoring system meets the requirements in § 63.1572. You are not required to do a performance evaluation to demonstrate initial compliance.
2. Option 1: Elect NSPS not subject to the NSPS for PM.	PM emissions must not exceed 1.0 kg/1,000 kg (1.0 lb/1,000 lb) of coke burn-off in the catalyst regenerator; if the discharged gases pass through an incinerator or waste heat boiler in which you burn auxiliary or supplemental liquid or solid fossil fuel, you must limit the incremental rate of PM to no more than 43.0 grams per Megajoule (g/MJ) or 0.10 pounds per million British thermal units (lb/million Btu) of heat input attributable to the liquid or solid fossil fuel; and the opacity of emissions must not exceed 30 percent, except for one 6-minute average opacity reading in any 1-hour period.	The average PM emission rate, measured using EPA method 5 over the period of the initial performance test, is no higher than 1.0 kg/1,000 kg (1.0 lb/1,000 lbs) of coke burn-off in the catalyst regenerator. The PM emission rate is calculated using Equations 1 and 2 of the § 63.1564. If applicable, the average PM emission rate, measured using EPA Method 5 over the period of the initial performance test, is no higher than 43.0 g/MJ or 0.010 lb/million Btu of heat input attributable to the liquid or solid fossil fuel. The PM emission rate is calculated using Equation 3 of § 63.1564; no more than one 6-minute average measured by the continuous opacity monitoring system exceeds 30 percent opacity in any 1-hour period over the period of the performance test; and your performance evaluation shows the continuous opacity monitoring system meets the applicable requirements in § 63.1572.

TABLE 5 TO SUBPART UUU OF PART 63.—INITIAL COMPLIANCE WITH METAL HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS—Continued

[As stated in § 63.1564(b)(5), you must meet each requirement in the following table that applies to you]

For each new and existing catalytic cracking unit catalyst regenerator vent * * *	For the following emission limit * * *	You have demonstrated initial compliance if * * *
3. Option 2: not subject to the NSPS for PM	PM emissions must not exceed 1.0 kg/1,000 kg (1.0 lb/1,000 lb) of coke burn-off in the catalyst regenerator.	The average PM emission rate, measured using EPA Method 5 over the period of the initial performance test, is less than or equal to 1.0 kg/1,000 kg (1.0 lb/1,000 lbs) of coke burn-off in the catalyst regenerator. The PM emission rate is calculated using Equations 1 and 2 of § 63.1564; and if you use a continuous opacity monitoring system, your performance evaluation shows the system meets the applicable requirements in § 63.1572.
4. Option 3: not subject to the NSPS for PM	Nickel (Ni) emissions from your catalyst regenerator vent must not exceed 13,000 mg/hr (0.029 lb/hr).	The average Ni emission rate, measured using Method 29 over the period of the initial performance test, is not more than 13,000 mg/hr (0.029 lb/hr). The Ni emission rate is calculated using Equation 5 of § 63.1564; and if you use a continuous opacity monitoring system, your performance evaluation shows the system meets the applicable requirements in § 63.1572.
5. Option 4: Ni lb/1,000 lbs of coke burn-off not subject to the NSPS for PM.	Ni emissions from your catalyst regenerator vent must not exceed 1.0 mg/kg (0.001 lb/1,000 lbs) of coke burn-off in the catalyst regenerator.	The average Ni emission rate, measured using Method 29 over the period of the initial performance test, is not more than 1.0 mg/kg (0.001 lb/1,000 lbs) of coke burn-off in the catalyst regenerator. The Ni emission rate is calculated using Equation 8 of § 63.1564; and if you use a continuous opacity monitoring system, your performance evaluation shows the system meets the applicable requirements in § 63.1572.

TABLE 6 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH METAL HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS

[As stated in § 63.1564(c)(1), you must meet each requirement in the following table that applies to you]

For each new and existing catalytic cracking unit * * *	Subject to this emission limit for your catalyst regenerator vent * * *	You must demonstrate continuous compliance by * * *
1. Subject to the NSPS for PM in 40 CFR 60.102.	a. PM emissions must not exceed 1.0 lb/1,000 lbs of coke burn-off in the catalyst regenerator; if the discharged gases pass through an incinerator or waste heat boiler in which you burn auxiliary or supplemental liquid or solid fossil fuel, incremental rate of PM can't exceed 43.0 g/MJ (0.10 lb/million Btu) of heat input attributable to the liquid or solid fossil fuel; and opacity of emissions can't exceed 30 percent, except for one 6-minute average opacity reading in any 1-hour period.	i. Determining and recording each day the average coke burn-off rate (thousands of kilograms per hour) using Equation 2 in § 63.1564 and the hours of operation for each catalyst regenerator; maintaining PM emission rate below 1.0 kg/1,000 kg (1.0 lb/1,000 lbs) of coke burn-off; if applicable, determining and recording each day the rate of combustion of liquid or solid fossil fuels (liters/hour or kilograms/hour) using Equation 3 of § 63.1564 and the hours of operation during which liquid or solid fossil-fuels are combusted in the incinerator-waste heat boiler; if applicable, maintaining PM rate below 43 g/MJ (0.10 lb/million Btu) of heat input attributable to the solid or liquid fossil fuel; collecting the continuous opacity monitoring data for each catalyst regenerator vent according to § 63.1572; and maintaining each 6-minute average at or below 30 percent except that one 6-minute average during a 1-hour period can exceed 30 percent.
2. Option 1: Elect NSPS not subject to the NSPS for PM in 40 CFR 60.102.	See item 1.a. of this table	See item 1.a.i. of this table.

TABLE 6 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH METAL HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS—Continued

[As stated in § 63.1564(c)(1), you must meet each requirement in the following table that applies to you]

For each new and existing catalytic cracking unit * * *	Subject to this emission limit for your catalyst regenerator vent * * *	You must demonstrate continuous compliance by * * *
3. Option 2: PM limit not subject to the NSPS for PM.	PM emissions must not exceed 1.0 lb/1,000 lbs of coke burn-off in the catalyst regenerator.	Determining and recording each day the average coke burn-off rate (thousands of kilograms per hour) and the hours of operation for each catalyst regenerator by Equation 2 of § 63.1564. You can use process data to determine the volumetric flow rate; and maintaining PM emission rate below 1.0 kg/1,000 kg (1.0 lb/1,000 lbs) of coke burn-off.
4. Option 3: Ni lb/hr not subject to the NSPS for PM.	Ni emissions must not exceed 13,000 mg/hr (0.029 lb/hr).	Maintaining Ni emission rate below 13,000 mg/hr (0.029 lb/hr).
5. Option 4: Ni lb/1,000 lbs of coke burn-off not subject to the NSPS for PM.	Ni emissions must not exceed 1.0 mg/kg (0.001 lb/1,000 lbs) of coke burn-off in the catalyst regenerator.	Determining and recording each day the average coke burn-off rate (thousands of kilograms per hour) and the hours of operation for each catalyst regenerator by Equation 2 of § 63.1564. You can use process data to determine the volumetric flow rate; and maintaining Ni emission rate below 1.0 mg/kg (0.001 lb/1,000 lbs) of coke burn-off in the catalyst regenerator.

TABLE 7 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS

[As stated in § 63.1564(c)(1), you must meet each requirement in the following table that applies to you]

For each new or existing catalytic cracking unit * * *	If you use * * *	For this operating limit * * *	You must demonstrate continuous compliance by * * *
1. Subject to NSPS for PM in 40 CFR 60.102.	Continuous opacity monitoring system.	Not applicable	Complying with Table 6 of this subpart.
2. Option 1: Elect NSPS not subject to the NSPS for PM in 40 CFR 60.102.	Continuous opacity monitoring system.	Not applicable	Complying with Table 6 of this subpart.
3. Option 2: PM limit not subject to the NSPS for PM in 40 CFR 60.102.	a. Continuous opacity monitoring system.	The opacity of emissions from your catalyst regenerator vent must not exceed the site-specific opacity operating limit established during the performance test	Collecting the hourly average continuous opacity monitoring system data according to § 63.1572; and maintaining each 6-minute average in each 1-hour period at or below the site-specific limit.
	b. Continuous parameter monitoring systems—electrostatic precipitator.	i. The daily average gas flow rate to the control device must not exceed the operating limit established during the performance test.	Collecting the hourly and daily average gas flow rate monitoring data according to § 63.1572 [1]; and maintaining the daily average gas flow rate at limit or below the established during the performance test.
		ii. The daily average voltage and secondary current (or total power input) to the control device must not fall below the operating limit established during the performance test.	Collecting the hourly and daily average voltage and secondary current (or total power input) monitoring data according to § 63.1572; and maintaining the daily average voltage and secondary current (or total power input) at or above the limit established during the performance test.
	c. Continuous parameter monitoring systems—wet scrubber.	i. The daily average pressure drop across the scrubber must not fall below the operating limit established during the performance test.	Collecting the hourly and daily average pressure drop monitoring data according to § 63.1572; and maintaining the daily average press drop above the limit established during the performance test.

TABLE 7 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

[As stated in § 63.1564(c)(1), you must meet each requirement in the following table that applies to you]

For each new or existing catalytic cracking unit * * *	If you use * * *	For this operating limit * * *	You must demonstrate continuous compliance by * * *
		ii. The daily average liquid-to-gas ratio must not fall below the operating limit established during the performance test.	Collecting the hourly average gas flow rate and water (or scrubbing liquid) flow rate monitoring data according to § 63.1572 [1]; determining and recording the hourly average liquid-to-gas ratio; determining and recording the daily average liquid-to-gas ratio; and maintaining the daily average liquid-to-gas ratio above the limit established during the performance test.
4. Option 3: Ni lb/hr not subject to the NSPS for PM in 40 CFR 60.102.	a. Continuous opacity monitoring system.	The daily average Ni operating value must not exceed the site-specific Ni operating limit established during the performance test.	Collecting the hourly average continuous opacity monitoring system data according § 63.1572; determining and recording equilibrium catalyst Ni concentration at least once a week collecting the hourly average gas flow rate monitoring data according to § 63.1572 [1]; determining and recording the hourly average Ni operating value using Equation 11 of § 63.1564; determining and recording the daily average Ni operating value; and maintaining the daily average Ni operating value below the site-specific Ni operating limit established the performance test.
	b. Continuous parameter monitoring systems—electrostatic precipitator.	i. The daily average gas flow rate to the control device must notice exceed the level established in the performance test.	See item 3.b.i. of this table.
		ii. The daily average voltage and secondary current (or total power input) must not fall below the level established in the performance test.	See item 3.b.ii. of this table.
		iii. The monthly rolling average of equilibrium catalyst Ni concentration must not exceed the level established during the performance test.	Determining the recording the equilibrium catalyst Ni concentration at least once a week; determining and recording the monthly rolling average of the equilibrium catalyst Ni concentration once each week using the weekly or most recent value; and maintaining the monthly rolling average below the limit established in the performance test
	c. Continuous parameter monitoring systems—wet scrubber.	i. The daily average pressure drop must not fall below the operating limit established in the performance test.	See item 3.c.i. of this table.
		ii. The daily average liquid-to-gas ratio must not fall below the operating limit established during the performance test.	See item 3.c.ii. of this table.

TABLE 7 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

[As stated in § 63.1564(c)(1), you must meet each requirement in the following table that applies to you]

For each new or existing catalytic cracking unit * * *	If you use * * *	For this operating limit * * *	You must demonstrate continuous compliance by * * *
		iii. The monthly rolling average equilibrium catalyst Ni concentration must not exceed the level established during the performance test.	Determining and recording the equilibrium catalyst Ni concentration at least once a week; determining and recording the monthly rolling average of equilibrium catalyst Ni concentration once each week using the weekly or most recent value; and maintaining the monthly rolling average below the limit established in the performance test.
5. Option 4: Ni lb/ton of coke burn-off not subject to the NSPS for PM in 40 CFR 60.102	a. Continuous opacity monitoring system.	The daily average Ni operating value must not exceed the site-specific Ni operating limit established during the performance test.	Collecting the hourly average continuous opacity monitoring system data according to § 63.1572; collecting the hourly average gas flow rate monitoring data according to § 63.1572 [1]; determining and recording equilibrium catalyst Ni concentration at least once a week; determining and recording the hourly average Ni operating value using Equation 12 of § 63.1564; determining and recording the daily average Ni operating value; and maintaining the daily average Ni operating value below the site-specific Ni operating limit established during the performance test.
	b. Continuous parameter monitoring systems—electrostatic precipitator.	i. The daily average gas flow rate to the control device must not exceed the level established in the performance test.	See item 3.b.i. of this table.
		ii. The daily average voltage and secondary current (or total power input) must not fall below the level established in the performance test.	See item 3.b.ii. of this table.
		iii. The monthly rolling average equilibrium catalyst Ni concentration must not exceed the level established during the performance test.	See item 4.b.iii. of this table.
	c. Continuous parameter monitoring systems—wet scrubber.	i. The daily average pressure drop must not fall below the operating limit established in the performance test.	See item 3.c.i. of this table.
		ii. The daily average liquid-to-gas ratio must not fall below the operating limit established during the performance test. See item 3.c.ii. of this table.	
		iii. The monthly rolling average equilibrium catalyst Ni concentration must not exceed the level established during the performance test.	See item 4.c.iii. of this table.

[1] If applicable, you can use the alternative in § 63.1573 for gas flow rate instead of a continuous parameter monitoring system if you used the alternative method in the initial performance test. If so, you must continuously monitor and record the air flow rate to the regenerator and the temperature of the gases entering the control device as described in § 63.1573. You must determine and record the hourly average gas flow rate using Equation 1 of § 63.1573 and the daily average gas flow rate. You must maintain the daily average gas flow rate below the operating limit established during the performance test.

TABLE 8 TO SUBPART UUU OF PART 63.—ORGANIC HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS

[As stated in § 63.1565(a)(1), you must meet each emission limitation in the following table that applies to you]

For each new and existing catalytic cracking unit * * *	You must meet the following emission limit for each catalyst regenerator vent * * *
1. Subject to the NSPS for carbon monoxide (CO) in 40 CFR 60.103.	CO emissions from the catalyst regenerator vent or CO boiler serving the catalytic cracking unit must not exceed 500 parts per million volume (ppmv) (dry basis).
2. Not subject to the NSPS for CO in 40 CFR 60.103.	a. CO emissions from the catalyst regenerator vent or CO boiler serving the catalytic cracking unit must not exceed 500 ppmv (dry basis). b. If you use a flare to meet the CO limit, the flare must meet the requirements for control devices in § 63.11(b): visible emissions must not exceed a total of 5 minutes during any 2 consecutive hours.

TABLE 9 TO SUBPART UUU OF PART 63.—OPERATING LIMITS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC CRACKING UNITS

[As stated in § 63.1565(a)(2), you must meet each operating limit in the following table that applies to you]

For each new or existing catalytic cracking unit * * *	For this type of continuous monitoring system * * *	For this type of control device * * *	You must meet this operating limit * * *
1. Subject to the NSPS for carbon monoxide (CO) in 40 CFR 60.103.	Continuous emission monitoring system.	Not applicable	Not applicable.
2. Not subject to the NSPS for CO in 40 CFR 60.103.	a. Continuous emission monitoring system.	Not applicable	Not applicable.
	b. Continuous parameter monitoring systems.	i. Thermal incinerator	Maintain the daily average combustion zone temperature above the limit established during the performance test; and maintain the daily average oxygen concentration in the vent stream (percent, dry basis) above the limit established during the performance test.
		ii. Boiler or process heater with a design heat input capacity under 44 MW or a boiler or process heater in which all vent streams are not introduced into the flame zone.	Maintain the daily average combustion zone temperature above the limit established in the performance test.
		iii. Flare	The flare pilot light must be present at all times and the flare must be operating at all times that emissions may be vented to it.

TABLE 10 TO SUBPART UUU OF PART 63.—CONTINUOUS MONITORING SYSTEMS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC CRACKING UNITS

[As stated in § 63.1565(b)(1), you must meet each requirement in the following table that applies to you]

For each new or existing catalytic cracking unit * * *	And you use this type of control device for your vent * * *	You must install, operate, and maintain this type of continuous monitoring system * * *
1. Subject to the NSPS for carbon monoxide (CO) in 40 CFR 60.103.	Not applicable	Continuous emission monitoring system to measure and record the concentration by volume (dry basis) of CO emissions from each catalyst regenerator vent.
2. Not subject to the NSPS for CO in 40 CFR 60.103.	a. Thermal incinerator	Continuous emission monitoring system to measure and record the concentration by volume (dry basis) of CO emissions from each catalyst regenerator vent; or continuous parameter monitoring systems to measure and record the combustion zone temperature and oxygen content (percent, dry basis) in the incinerator vent stream.
	b. Process heater or boiler with a design heat input capacity under 44 MW or process heater or boiler in which all vent streams are not introduced into the flame zone.	Continuous emission monitoring system to measure and record the concentration by volume (dry basis) of CO emissions from each catalyst regenerator vent; or continuous parameter monitoring systems to measure and record the combustion zone temperature.

TABLE 10 TO SUBPART UUU OF PART 63.—CONTINUOUS MONITORING SYSTEMS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC CRACKING UNITS—Continued

[As stated in § 63.1565(b)(1), you must meet each requirement in the following table that applies to you]

For each new or existing catalytic cracking unit * * *	And you use this type of control device for your vent * * *	You must install, operate, and maintain this type of continuous monitoring system * * *
	c. Flare	Monitoring device such as a thermocouple, an ultraviolet beam sensor, or infrared sensor to continuously detect the presence of a pilot flame.
	d. No control device	Continuous emission monitoring system to measure and record the concentration by volume (dry basis) of CO emissions from each catalyst regenerator vent.

TABLE 11 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC CRACKING UNITS NOT SUBJECT TO NEW SOURCE PERFORMANCE STANDARD (NSPS) FOR CARBON MONOXIDE (CO)

[As stated in § 63.1565(b)(2) and (3), you must meet each requirement in the following table that applies to you]

For * * *	You must * * *	Using * * *	According to these requirements * * *
1. Each new or existing catalytic cracking unit catalyst regenerator vent.	a. Select sampling port's location and the number of traverse ports.	Method 1 or 1A in appendix A to part 60 of this chapter.	Sampling sites must be located at the outlet of the control device or the outlet of the regenerator, as applicable, and prior to any releases to the atmosphere.
	b. Determine velocity and volumetric flow rate.	Method 2, 2A, 2D, 2F, or 2G in appendix A to part 60 of this chapter, as applicable.	
	c. Conduct gas molecular weight analysis.	Method 3, 3A, or 3B in appendix A to part 60 of this chapter, as applicable.	
	d. Measure moisture content of the stack gas.	Method 4 in appendix A to part 60 of this chapter.	
2. For each new or existing catalytic cracking unit catalyst regenerator vent if you use a continuous emission monitoring system.	Measure CO emissions	Data from your continuous emission monitoring system.	Collect CO monitoring data for each vent for 24 consecutive operating hours; and reduce the continuous emission monitoring data to 1-hour averages computed from four or more data points equally spaced over each 1-hour period.
3. Each catalytic cracking unit catalyst regenerator vent if you use continuous parameter monitoring systems.	a. Measure the CO concentration (dry basis) of emissions exiting the control device.	Method 10, 10A, or 10B in appendix A to part 60 of this chapter, as applicable.	
	b. Establish each operating limit in Table 9 of this subpart that applies to you.	Data from the continuous parameter monitoring systems.	
	c. Thermal incinerator combustion zone temperature.	Data from the continuous parameter monitoring systems.	Collect temperature monitoring data every 15 minutes during the entire period of the CO initial performance test; and determine and record the minimum hourly average combustion zone temperature from all the readings.
	d. Thermal incinerator: oxygen, content (percent, dry basis) in the incinerator vent stream.	Data from the continuous parameter monitoring systems.	Collect oxygen concentration (percent, dry basis) monitoring data every 15 minutes during the entire period of the CO initial performance test; and determine and record the minimum hourly average percent excess oxygen concentration from all the readings.

TABLE 11 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC CRACKING UNITS NOT SUBJECT TO NEW SOURCE PERFORMANCE STANDARD (NSPS) FOR CARBON MONOXIDE (CO)—Continued

[As stated in § 63.1565(b)(2) and (3), you must meet each requirement in the following table that applies to you]

For * * *	You must * * *	Using * * *	According to these requirements * * *
	e. If you use a process heater or boiler with a design heat input capacity under 44 MW or process heater or boiler in which all vent streams are not introduced into the flame zone, establish operating limit for combustion zone temperature.	Data from the continuous parameter monitoring systems.	Collect the temperature monitoring data every 15 minutes during the entire period of the CO initial performance test; and determine and record the minimum hourly average combustion zone temperature from all the readings.
	f. If you use a flare, conduct visible emission observations.	Method 22 (40 CFR part 60, appendix A).	Maintain a 2-hour observation period; and record the presence of a flame at the pilot light over the full period of the test.
	g. If you use a flare, determine that the flare meets the requirements for net heating value of the gas being combusted and exit velocity.	40 CFR 60.11(b)(6)through(8).	

TABLE 12 TO SUBPART UUU OF PART 63.—INITIAL COMPLIANCE WITH ORGANIC HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS

[As stated in § 63.1565(b)(4), you must meet each requirement in the following table that applies to you]

For each new and existing catalytic cracking unit * * *	For the following emission limit * * *	You have demonstrated initial compliance if * * *
1. Subject to the NSPS for carbon monoxide (CO) in 40 CFR 60.103.	CO emissions from your catalyst regenerator vent or CO boiler serving the catalytic cracking unit must not exceed 500 ppmv (dry basis).	You have already conducted a performance test to demonstrate initial compliance with the NSPS and the measured CO emissions are less than or equal to 500 ppm (dry basis). As part of the Notification of Compliance Status, you must certify that your vent meets the CO limit. You are not required to conduct another performance test to demonstrate initial compliance. You have already conducted a performance evaluation to demonstrate initial compliance with the applicable performance specification. As part of your Notification of Compliance Status, you must certify that your continuous emission monitoring system meets the applicable requirements in § 63.1572. You are not required to conduct another performance evaluation to demonstrate initial compliance.
2. Not subject to the NSPS for CO in 40 CFR 60.103.	a. CO emissions from your catalyst regenerator vent or CO boiler serving the catalytic cracking unit must not exceed 500 ppmv (dry basis).	i. If you use a continuous parameter monitoring system, the average CO emissions measured by Method 10 over the period of the initial performance test are less than or equal to 500 ppmv (dry basis). ii. If you use a continuous emission monitoring system, the hourly average CO emissions over the 24-hour period for the initial performance test are not more than 500 ppmv (dry basis); and your performance evaluation shows your continuous emission monitoring system meets the applicable requirements in § 63.1572.
	b. If you use a flare, visible emissions must not exceed a total of 5 minutes during any 2 operating hours.	Visible emissions, measured by Method 22 during the 2-hour observation period during the initial performance test, are no higher than 5 minutes.

TABLE 13 TO SUBPART UUU OF PART 63—CONTINUOUS COMPLIANCE WITH ORGANIC HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS

[As stated in § 63.1565(c)(1), you must meet each requirement in the following table that applies to you]

For each new and existing catalytic cracking unit * * ;*	Subject to this emission limit for your catalyst regenerator vent * * *	If you must * * *	You must demonstrate continuous compliance by * * *
1. Subject to the NSPS for carbon monoxide (CO) in 40 CFR 60.103.	CO emissions from your catalyst regenerator vent or CO boiler serving the catalytic cracking unit must not exceed 500 ppmv (dry basis).	Continuous emission monitoring system.	Collecting the hourly average CO monitoring data according to § 63.1572; and maintaining the hourly average CO concentration at or below 500 ppmv (dry basis).
2. Not subject to the NSPS for CO in 40 CFR 60.103.	i. CO emissions from your catalyst regenerator vent or CO boiler serving the catalytic cracking unit must not exceed 500 ppmv (dry basis).	Continuous emission monitoring system.	Same as above.
	ii. CO emissisons from your catalyst regenerator vent or CO boiler serving the catalytic cracking unit must not exceed 500 ppmv (dry basis).	Continuous parameter monitoring system.	Maintaining the hourly average CO concentration below 500 ppmv (dry basis).
	iii. Visible emissions from a flare must not exceed a total of 5 minutes during any 2-hour period.	Control device-flare	Maintaining visible emissions below a total of 5 minutes during any 2-hour operating period.

TABLE 14 TO SUBPART UUU OF PART 63—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC CRACKING UNITS

[As stated in § 63.1565(c)(1), you must meet each requirement in the following table that applies to you]

For each new existing catalytic cracking unit * * *	If you use * * *	For this operating limit * * *	You must demonstrate continuous compliance by * * *
1. Subject to NSPS for carbon monoxide (CO) in 40 CFR 60.103.	Continuous emission monitoring system.	Not applicable	Complying with Table 13 of this subpart.
2. Not subject to the NSPS for CO in 40 CFR 60.103.	a. Continuous emission monitoring system.	Not applicable	Complying with Table 13 of this subpart.
	b. Continuous parameter monitoring systems—thermal incinerator.	i. The daily average combustion zone temperature must not fall below the level established during the performance test.	Collecting the hourly and daily average temperature monitoring data according to § 63.1572; and maintaining the daily average combustion zone temperature above the limit established during the performance test.
		ii. The daily average oxygen concentration in the vent stream (percent, dry basis) must not fall below the level established during the performance test.	Collecting the hourly and daily average oxygen concentration monitoring data according to § 63.1572; and maintaining the daily average oxygen concentration above the limit established during the performance test.
	c. Continuous parameter monitoring systems—boiler or process heater with a design heat input capacity under 44 MW or boiler or process heater in which all vent streams are not introduced into the flame zone.	The daily combustion zone temperature must not fall below the level established in the performance test.	Collecting the average hourly and daily temperature monitoring data according to § 63.1572; and maintaining the daily average combustion zone temperature above the limit established during the performance test.
	d. Continuous parameter monitoring system—flare.	The flare pilot light must be present at all times and the flare must be operating at all times that emissions may be vented to it.	Collecting the flare monitoring data according to § 63.1572; and recording for each 1-hour period whether the monitor was continuously operating and the pilot light was continuously present during each 1-hour period.

TABLE 15 TO SUBPART UUU OF PART 63.—ORGANIC HAP EMISSION LIMITS FOR CATALYTIC REFORMING UNITS

[As stated in § 63.1566(a)(1), you must meet each emission limitation in the following table that applies to you]

For each new or existing catalytic reforming unit * * *	You must meet this emission limit for each process vent during depressuring and purging operation * * *
1. Option 1	Vent emissions to a flare that meets the requirements for control devices in § 63.11(b). Visible emissions from a flare must not exceed a total of 5 minutes during any 2-hour operating period.
2. Option 2	Using a control device, reduce uncontrolled emissions of total organic compounds (TOC) from your process vent by 98 percent by weight or to a concentration of 20 ppmv (dry basis), corrected to 3 percent oxygen, whichever is less stringent. If you vent emissions to a boiler or process heater to comply with the percent reduction or concentration emission limitation, the vent stream must be introduced into the flame zone, or any other location that will achieve the percent reduction or concentration standard.

TABLE 16 TO SUBPART UUU OF PART 63.—OPERATING LIMITS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS

[As stated in § 63.1566(a)(2), you must meet each operating limit in the following table that applies to you]

For each new or existing catalytic reforming unit * * *	For this type of control device * * *	You must meet this operating limit during depressuring and purging operations * * *
1. Option 1: vent to flare	Flare that meets the requirements for control devices in § 63.11(b).	The flare pilot light must be present at all times and the flare must be operating at all times that emissions may be vented to it.
2. Option 2: percent reduction or concentration limit.	Thermal incinerator, boiler or process heater with a design heat input capacity under 44 MW, or boiler or process heater in which all vent streams are not introduced into the flame zone.	The daily average combustion zone temperature must not fall below the limit established during the performance test.

TABLE 17 TO SUBPART UUU OF PART 63.—CONTINUOUS MONITORING SYSTEMS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS

[As stated in § 63.1566(b)(1), you must meet each requirement in the following table that applies to you]

For each new or exiting catalytic reforming unit * * *	If you use this type of control device * * *	You must install and operate this type of continuous monitoring system * * *
1. Option 1: vent to a flare	Flare that meets the requirements for control devices in § 63.11(b).	Monitoring device such as a thermocouple, an ultraviolet beam sensor, or infrared sensor to continuously detect the presence of a pilot flame.
2. Option 2: percent reduction or concentration limit.	Thermal incinerator, process heater or boiler with a design heat input capacity under 44 MW, or process heater or boiler in which all vent streams are not introduced into the flame zone.	Continuous parameter monitoring systems to measure and record the combustion zone temperature.

TABLE 18 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS

[As stated in § 63.1566(b)(2) and (3), you must meet each requirement in the following table that applies to you]

For each new or exiting catalytic reforming unit * * *	You must * * *	Using * * *	According to these requirements * * *
1. Option 1: vent to a flare.	a. Conduct visible emission observations.	Method 22 (40 CFR 60, appendix A).	2-hour observation period. Record the presence of a flame at the pilot light over the full period of the test.
	b. Determine that the flare meets the requirements for net heating value of the gas being combusted and exit velocity.	Not applicable	40 CFR 60.11(b)(6) through (8).
2. Option 2: percent reduction or concentration limit.	a. Select sampling site	Method 1 or 1A (40 CFR part 60, appendix A). No traverse site selection method is needed for vents smaller than 0.10 meter in diameter.	Sampling sites must be located at the inlet (if you elect the emission reduction standard) and outlet of the control device and prior to any releases to the atmosphere.

TABLE 18 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS—Continued

[As stated in § 63.1566(b)(2) and (3), you must meet each requirement in the following table that applies to you]

For each new or exiting catalytic reforming unit * * *	You must * * *	Using * * *	According to these requirements * * *
	b. Measure gas volumetric flow rate.	Method 2, 2A, 2C, 2D, 2F, or 2G (40 CFR part 60, appendix A), as applicable.	
	c. Measure TOC concentration (for percent reduction standard).	Method 25 (40 CFR part 60, appendix A) to measure TOC concentration at the inlet and outlet of the control device. If the TOC outlet concentration is expected to be less than 50 ppm, you can use Method 25A to measure TOC concentration at the inlet and the outlet of the control device.	Take either an integrated sample or four grab samples during each run. If you use a grab sampling technique, take the samples at approximately equal intervals in time, such as 15-minute intervals during the run.
	d. Calculate TOC emission rate and mass emission reduction.	Calculate emission rate by Equation 1 of § 63.1566 (if you use Method 25) or Equation 2 of § 63.1566 (if you use Method 25A). Calculate mass emission reduction by Equation 3 of § 63.1566.	
	e. Measure TOC concentration (for concentration standard).	Method 25A (40 CFR part 60, appendix A) to measure TOC concentration at the outlet of the control device.	
	f. Determine oxygen content in the gas stream at the outlet of the control device.	Method 3A or 3B (40 CFR part 60, appendix A), as applicable.	
	g. Correct the measured TOC concentration for oxygen content.	Equation 4 of § 63.1566	
	h. Established each operating limit in Table 16 of this subpart that applies to you for a thermal incinerator, or process heater or boiler with a design heat input capacity under 44 MW, or process heater or boiler in which all vent streams are not introduced into the flame zone.	Data from the continuous parameter monitoring systems.	Collect the temperature monitoring data every 15 minutes during the entire period of the initial TOC performance test. Determine and record the minimum hourly average combustion zone temperature.

TABLE 19 TO SUBPART UUU OF PART 63—INITIAL COMPLIANCE WITH ORGANIC HAP EMISSION LIMITS FOR CATALYTIC REFORMING UNITS

[As stated in § 63.1566(b)(7), you must meet each requirement in the following table that applies to you.]

For . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
1. Each new and existing catalytic reforming unit.	a. Visible emissions from a flare must not exceed a total of 5 minutes during any 2 consecutive hours.	Visible emissions, measured using Method 22 over the 2-hour observation period of the performance test do not exceed a total of 5 minutes.
	b. Reduce uncontrolled emissions of TOC from your process vent using a control device, by 98 percent by weight or to a concentration of 20 ppmv, on a dry basis, corrected to 3 percent oxygen, whichever is less stringent.	The mass emission reduction measured using Method 25 over the period of the performance test, is at least 98 percent by weight. The mass emission reduction is calculated using Equations 1 (or 2) and 3 of § 63.1566 or the TOC concentration, measured by Method 25A over the period of the performance test, does not exceed 20 ppmv (dry basis), corrected to 3 percent oxygen using Equation 4 of § 63.1566.

TABLE 20 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH ORGANIC HAP EMISSION LIMITS FOR CATALYTIC REFORMING UNITS

[As stated in § 63.1566(c)(1), you must meet each requirement in the following table that applies to you]

For * * *	For this emission limit * * *	You must demonstrate continuous compliance during depressuring and purging by * * *
1. Option 1: Each new or existing catalytic reforming unit.	Vent emissions from your process vent to a flare that meets the requirements in § 63.11(b).	Maintaining visible emissions from a flare below a total of 5 minutes during any 2 consecutive hours.
2. Option 2: Each new or existing catalytic reforming unit.	Using a control device, reduce uncontrolled emissions of TOC from your process vent by 98 percent by weight or to a concentration of 20 ppmv, (dry basis), corrected to 3 percent oxygen, whichever is less stringent.	Maintaining a 98 percent by weight TOC emission reduction; or maintaining a TOC concentration of not more than 20 ppmv (dry basis), corrected to 3 percent oxygen, whichever is less stringent.

TABLE 21 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS

[As stated in § 63.1566(c)(1), you must meet each requirement in the following table that applies to you]

For * * *	If you use * * *	For this operating limit * * *	You must demonstrate continuous compliance during depressuring and purging by * * *
1. Each new or existing catalytic reforming unit.	a. Flare that meets the requirements in § 63.11(b).	The flare pilot light must be present at all times and the flare must be operating at all times that emissions may be vented to it.	Collecting flare monitoring data according to § 63.1572; and recording for each 1-hour period whether the monitor was continuously operating and the pilot light was continuously present during each 1-hour period.
	b. Thermal incinerator, boiler or process heater with a design input capacity under 44 MW or boiler or process heater in which all vent streams are not introduced into the flame zone.	Maintain the daily average combustion zone temperature above the limit established during the performance test.	Collecting the hourly and daily temperature monitoring data according to § 63.1572; and maintaining the daily average combustion zone temperature above the limit established during the performance test.

TABLE 22 TO SUBPART UUU OF PART 63—INORGANIC HAP EMISSION LIMITS FOR CATALYTIC REFORMING UNITS

[As stated in § 63.1567(a)(1), you must meet each emission limitation in the following table that applies to you]

For * * *	You must meet this emission limit for your process vent during coke burn-off and catalyst rejuvenation * * *
1. Each existing semi-regenerative catalytic reforming unit.	Reduce uncontrolled emissions of hydrogen chloride (HC1) by 92 percent by weight using a control device or to a concentration of 30 ppmv (dry basis), corrected to 3 percent oxygen.
2. Each existing cyclic or continuous catalytic reforming unit.	Reduce uncontrolled emissions of HC1 by 97 percent by weight using a control device or to a concentration of 10 ppmv (dry basis), corrected to 3 percent oxygen.
3. Each new semi-regenerative, cyclic, or continuous catalytic reforming unit.	Reduce uncontrolled emissions of HC1 by 97 percent by weight using a control device or to a concentration of 10 ppmv (dry basis), corrected to 3 percent oxygen.

TABLE 23 TO SUBPART UUU OF PART 63.—OPERATING LIMITS FOR INORGANIC HAP EMISSION LIMITATIONS FOR CATALYTIC REFORMING UNITS

[As stated in § 63.1567(a)(2), you must meet each operating limit in the following table that applies to you]

For * * *	If you use this type of control device * * *	You must meet this operating limit during coke burn-off and catalytst rejuvenation . . .
1. Each new or existing catalytic reforming unit	a. Wet scrubber	The daily average pH of the water (or scrubbing liquid) exiting the scrubber must not fall below the limit established during the performance test; and the daily average liquid-to-gas ratio must not fall below the limit established during the performance test.
	b. Internal scrubbing system (i.e., no add-on control device).	The HCl concentration in the catalyst regenerator exhaust gas must not exceed the limit established during the performance test.

TABLE 24 TO SUBPART UUU OF PART 63.—CONTINUOUS MONITORING SYSTEMS FOR INORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS

[As stated in § 63.1567(b)(1), you must meet each requirement in the following table that applies to you]

If you use this type of control device for your vent * * *	You must install and operate this type of continuous monitoring system * * *
1. Wet scrubber	Continuous parameter monitoring system to measure and record the pH of the water (or scrubbing liquid) exiting the scrubber during coke burn-off and catalyst rejuvenation. If applicable, you can use the alternative in § 63.1573 instead of a continuous parameter monitoring system for pH of the water (or scrubbing liquid); and continuous parameter monitoring systems to measure and record the gas flow rate to the scrubber and the total water (or scrubbing liquid) flow rate to the scrubber during coke burn-off and catalyst rejuvenation.
2. Internal scrubbing system (i.e., no add-on control device).	Colormetric tube sampling system to measure the HCl concentration in the catalyst regenerator exhaust gas during coke burn-off and catalyst rejuvenation.

TABLE 25 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS FOR INORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS

[As stated in § 63.1567(b)(2) and (3), you must meet each requirement in the following table that applies to you]

If you use this type of control device or system * * *	You must * * *	Using * * *	According to these requirements * * *
1. Wet scrubber	a. Measure the HCl concentration at the outlet of the control device (for the concentration standard) or at the inlet and outlet of the control d4evice (for the percent reduction standard).	i. Method 26A (40 CFR part 60, appendix A).	(1) Sampling rate must be at least 0.014 dscm/min (0.5 dscf/min). You must do the test during the coke burn-off and catalyst rejuvenation cycle, but don't make any test runs during the first hour or the last 6 hours of the cycle. (2) Record the total amount (rate) of scrubbing liquid or solution and the amount (rate) of make-up liquid to the scrubber during each test run.
	b. Establish operating limit for pH level.	.....	(1) Measure and record the pH of the water (or scrubbing liquid) exiting the scrubber every 15 minutes during the entire period of the performance test. Determine and record the hourly average pH level from the recorded values. (2) If you use the alternative method in § 63.1573, measure and record the pH of the water (or scrubbing liquid) exiting the scrubber during coke burn-off and catalyst rejuvenation using pH strips at least three times during each run. Determine and record the average pH level.
	c. Establish operating limit for liquid-to-gas ratio.	Data from the continuous parameter monitoring systems.	Measure and record the gas flow rate to the scrubber and the total water (or scrubbing liquid) flow rate to the scrubber every 15 minutes during the entire period of the performance test. Determine and record the hourly average gas flow rate and total water (or scrubbing liquid) flow rate. Determine and record the minimum liquid-to-gas ratio.
2. Internal scrubbing system (i.e., no add-on control device).	a. Measure the concentration of HCl in the catalyst regenerator exhaust gas.	Method 26 (40 CFR part 60, appendix A).	Sampling rate must be at least 0.014 dscm/min (0.5 dscf/min). You must do the test during the coke burn-off and catalyst rejuvenation cycle, but don't make any test runs during the first hour or the last 6 hours of the cycle.

TABLE 25 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS FOR INORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS—Continued

[As stated in § 63.1567(b)(2) and (3), you must meet each requirement in the following table that applies to you]

If you use this type of control device or system * * *	You must * * *	Using * * *	According to these requirements * * *
	b. Establish operating limit for HCl concentration.	Measure and record the HCl concentration in the catalyst regenerator exhaust gas using the colorimetric tube sampling system at least three times during each test run. Determine and record the average HCl concentration.	

TABLE 26 TO SUBPART UUU OF PART 63.—INITIAL COMPLIANCE WITH INORGANIC HAP EMISSION LIMITS FOR CATALYTIC REFORMING UNITS

[As stated in § 63.1567(b)(4), you must meet each requirement in the following table that applies to you]

For* * *	For the following emission limit * * *	You have demonstrated initial compliance if * * *
1. Each existing semi-regenerative catalytic reforming unit.	Reduce uncontrolled emissions of HCl by 92 percent by weight using a control device or to a concentration of 30 ppmv, (dry basis), corrected to 3 percent oxygen.	Average emissions of HCl measured using Method 26 or 26A, as applicable over the period of the performance test, are reduced by 92 percent or to a concentration less than or equal to 30 ppmv (dry basis) corrected to 3 percent oxygen.
2. Each existing cyclic or continuous catalytic reforming unit and each new semi-regenerative, cyclic, or continuous catalytic reforming unit.	Reduce uncontrolled emissions of HCl by 97 percent by weight using a control device, or to a concentration of 10 ppmv (dry basis), corrected to 3 percent oxygen.	Average emissions of HCl measured using Method 26 or 26A, as applicable over the period of the performance test, are reduced by 97 percent or to a concentration less than or equal to 10 ppmv (dry basis) corrected to 3 percent oxygen.

TABLE 27 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH INORGANIC HAP EMISSION LIMITS FOR CATALYTIC REFORMING UNITS

[As stated in § 63.1567(c)(1), you must meet each requirement in the following table that applies to you]

For * * *	For this emission limit * * *	You must demonstrate continuous compliance during coke burn-off and catalyst rejuvenation by * * *
1. Each existing semi-regenerative catalytic reforming unit.	Reduce uncontrolled emissions of HCl by 92 percent by weight using a control device or to a concentration of 30 ppmv (dry basis), corrected to 3 percent oxygen.	Maintaining a 92 percent HCl emission reduction or an HCl concentration no more than 30 ppmv (dry basis), corrected to 3 percent oxygen.
2. Each existing cyclic or continuous catalytic reforming unit.	Reduce uncontrolled emissions of HCl by 97 percent by weight using a control device, or to a concentration of 10 ppmv (dry basis), corrected to 3 percent oxygen.	Maintaining a 97 percent HCl control efficiency or an HCl concentration no more than 10 ppmv (dry basis), corrected to 3 percent oxygen.
3. Each new semi-regenerative, cyclic, or continuous catalytic reforming unit.	Reduce uncontrolled emissions of HCl by 97 percent by weight using a control device, or to a concentration of 10 ppmv (dry basis), corrected to 3 percent oxygen.	Maintaining a 97 percent HCl control efficiency or an HCl concentration no more than 10 ppmv (dry basis), corrected to 3 percent oxygen.

TABLE 28 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR INORGANIC HAP EMISSIONS FROM CATALYTIC REFORMING UNITS

[As stated in § 63.1567(c)(1), you must meet each requirement in the following table that applies to you]

For * * *	For this operating limit * * *	If you use this type of control device * * *	You must demonstrate continuous compliance during coke burn-off and catalyst rejuvenation by * * *
1. Each new or existing catalytic reforming unit.	a. The daily average pH of the water (or scrubbing and liquid) exiting the scrubber must not fall below the level established during the performance test.	i. Wet scrubber	(1) Collecting the hourly and daily average pH monitoring data according to § 63.1572; and maintaining the daily average the pH above the operating limit established during the performance test. (2) If you use the alternative in § 63.1573, measuring and recording the pH of the water (or scrubbing liquid) exiting the scrubber every hour according to § 63.1572; determining and recording the daily average pH; and maintaining the daily average pH above the operating limit established during the performance test.
	b. The daily average liquid-to-gas ratio must not fall below the level established during the performance test.	Wet scrubber	Collecting the hourly average gas flow rate and total water (or scrubbing liquid) flow rate monitoring data; determining and recording the hourly average liquid-to-gas ratio; determining and recording the daily average liquid-to-gas ratio; and maintaining the daily average liquid-to-gas ratio above the limit established during the performance test.
	c. The HCl concentration in the catalyst regenerator exhaust gas must not exceed the applicable operating limit established during the performance test.	Internal scrubbing system (e.g., no add-on control device).	Measuring and recording the concentration of HCl every 4 hours using a colormetric tube sampling system; and maintaining the HCl concentration below the applicable operating limit.

TABLE 29 TO SUBPART UUU OF PART 63.—HAP EMISSION LIMITS FOR SULFUR RECOVERY UNITS

[As stated in § 63.1568(a)(1), you must meet each emission limitation in the following table that applies to you]

For * * *	You must meet this emission limit for each process vent * * *
1. Each new or existing Claus sulfur recovery unit part of a sulfur recovery plant of 20 long tons per day or more and subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2).	a. 250 ppmv (dry basis) of sulfur dioxide (SO_2) at zero percent excess air if you use an oxidation or reduction control system followed by incineration. b. 300 ppmv of reduced sulfur compounds calculated as ppmv SO_2 (dry basis) at zero percent excess air if you use a reduction control system without incineration.
2. Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2): Option 1 (Elect NSPS).	a. 250 ppmv (dry basis) of SO_2 at zero percent excess air if you use an oxidation or reduction control system followed by incineration. b. 300 ppmv of reduced sulfur compounds calculated as ppmv SO_2 (dry basis) at zero percent excess air if you use a reduction control system without incineration.
3. Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in paragraph (a)(2) of 40 CFR 60.104: Option 2 (TRS limit).	300 ppmv of total reduced sulfur (TRS) compounds, expressed as an equivalent SO_2 concentration (dry basis) at zero percent oxygen.

TABLE 30 TO SUBPART UUU OF PART 63.—OPERATING LIMITS FOR HAP EMISSIONS FROM SULFUR RECOVERY UNITS

[As stated in § 63.1568(a)(2), you must meet each operating limit in the following table that applies to you]

For * * *	If use this type of control device	You must meet this operating limit* * *
1. Each new or existing Claus sulfur recovery unit part of a sulfur recovery plant of 20 long tons per day or more and subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2).	Not applicable	Not applicable.
2. Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2): Option 1 (Elect NSPS).	Not applicable	Not applicable.
3. Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2): Option 2 (TRS limit).	Thermal incinerator	Maintain the daily average combustion zone temperature above the limit established during the performance test; and maintain the daily average oxygen concentration in the vent stream (percent, dry basis) above the limit established during the performance test.

TABLE 31 TO SUBPART UUU OF PART 63.—CONTINUOUS MONITORING SYSTEMS FOR HAP EMISSIONS FROM SULFUR RECOVERY UNITS

[As stated in § 63.1568(b)(1), you must meet each requirement in the following table that applies to you]

For * * *	For this limit * * *	You must install and operate this continuous monitoring system * * *
1. Each new or existing Claus sulfur recovery unit part to a sulfur recovery plant of 20 long tons per day and subject to the NSPS for sulfur oxides in 40 CFR 60.104 (1) (2).	a. 250 ppmv (dry basis) of SO_2 at zero percent excess air if you use an oxidation or reduction control system followed by incineration.	Continuous emission monitoring system to measure and record the hourly average concentration of SO_2 (dry basis) at zero percent excess air for each exhaust stack. This system must include an oxygen monitor for correcting the data for excess air.
	b. 300 ppmv of reduced sulfur compounds calculated as ppmv SO_2 (dry basis) at zero percent excess air if you use a reduction control system without incineration.	Continuous emission monitoring system to measure and record the hourly average concentration of reduced sulfur and oxygen (O_2) emissions. Calculate the reduced sulfur emissions as SO_2 (dry basis) at zero percent excess air. *Exception:* You can use an instrument having an air or SO_2 dilution and oxidation system to convert the reduced sulfur to SO_2 for continuously monitoring and recording the concentration (dry basis) at zero percent excess air of the resultant SO_2 instead of the reduced sulfur monitor. The monitor must include an oxygen monitor for correcting the data for excess oxygen.
2. Option 1: Elect NSPS. Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in paragraph (a) (2) of 40 CFR 60.104.	a. 250 ppmv (dry basis) of SO_2 at zero percent excess air if you use an oxidation or reduction control system followed by incineration.	Continuous emission monitoring system to measure and record the hourly average concentration of SO_2 (dry basis), at zero percent excess air for each exhaust stack. This system must include an oxygen monitor for correcting the data for excess air.
	b. 300 ppmv of reduced sulfur compounds calculated as ppmv SO_2 (dry basis) at zero percent excess air if you use a reduction control system without incineration.	Continuous emission monitoring system to measure and record the hourly average concentration of reduced sulfur and O_2 emissions for each exhaust stack. Calculate the reduced sulfur emissions as SO_2 (dry basis), at zero percent excess air. *Exception:* You can use an instrument having an air or O_2 dilution and oxidation system to convert the reduced sulfur to SO_2 for continuously monitoring and recording the concentration (dry basis) at zero percent excess air of the resultant SO_2 instead of the reduced sulfur monitor. The monitor must include an oxygen monitor for correcting the data for excess oxygen.

TABLE 31 TO SUBPART UUU OF PART 63.—CONTINUOUS MONITORING SYSTEMS FOR HAP EMISSIONS FROM SULFUR RECOVERY UNITS—Continued

[As stated in § 63.1568(b)(1), you must meet each requirement in the following table that applies to you]

For * * *	For this limit * * *	You must install and operate this continuous monitoring system * * *
3. Option 2: TRS limit Each new or existing sulfur recovery unit (Claus or Other type, regardless or size) not subject to the NSPS for sulfur oxides in 40 CFR 60.104 (a) (2).	300 ppmv of total reduced sulfur (TRS) compounds, expressed as an equivalent SO_2 concentration (dry basis) at zero percent oxygen.	Continuous emission monitoring system to measure and record the hourly average concentration of TRS for each exhaust stack. This monitor must include an oxygen monitor for correcting the data for excess oxygen; or continuous parameter monitoring systems to measure and record the combustion zone temperature of each thermal incinerator and the oxygen content (percent, dry basis) in the vent stream of the incinerator.

TABLE 32 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS FOR HAP EMISSIONS FROM SULFUR RECOVERY UNITS NOT SUBJECT TO THE NEW SOURCE PERFORMANCE STANDARDS FOR SULFUR OXIDES

[As stated in § 63.1568(b)(2) and (3), you must meet each requirement in the following table that applies to you]

For * * *	You must * * *	Using * * *	According to these requirements * * *
1. Each new and existing sulfur recovery unit: Option 1 (Elect NSPS).	Measure SO_2 concentration (for an oxidation or reduction system followed by incineration) or the concentration of reduced sulfur (or SO_2 if you use an instrument to convert the reduced sulfur to SO_2) for a reduction control system without incineration.	Data from continuous emission monitoring system.	Collect SO_2 monitoring data every 15 minutes for 24 consecutive operating hours. Reduce the data to 1-hour averages computed from four or more data points equally spaced over each 1-hour period.
2. Each new and existing sulfur recovery unit: Option 2 (TRS limit).	a. Select sampling port's location and the number of traverse ports.	Method 1 or 1A appendix A to part 60 of this chapter.	Sampling sites must be located at the outlet of the control device and prior to any releases to the atmosphere.
	b. Determine velocity and volumetric flow rate.	Method 2, 2A, 2C, 2D, 2F, or 2G in appendix A to part 60 of this chapter, as applicable.	
	c. Conduct gas molecular weight analysis; obtain the oxygen concentration needed to correct the emission rate for excess air.	Method 3, 3A, or 3B in appendix A to part 60 of this chapter, as applicable.	Take the samples simultaneously with reduced sulfur or moisture samples.
	d. Measure moisture content of the stack gas.	Method 4 in appendix A to part 60 of this chapter.	Make your sampling time for each Method 4 sample equal to that for 4 Method 15 samples.
	e. Measure the concentration of TRS.	Method 15 or 15A in appendix A to part 60 of this chapter, as applicable.	If the cross-sectional area of the duct is less than 5 square meters (m^2) or 54 square feet, you must use the centroid of the cross section as the sampling point. If the cross-sectional area is 5 m^2 or more and the centroid is more than 1 meter (m) from the wall, your sampling point may be at a point no closer to the walls than 1 m or 39 inches. Your sampling rate must be at least 3 liters per minute or 0.10 cubic feet per minute to ensure minimum residence time for the sample inside the sample lines.
	f. Calculate the SO_2 equivalent for each run after correcting for moisture and oxygen.	The arithmetic average of the SO_2 equivalent for each sample during the run.	
	g. Correct the reduced sulfur samples to zero percent excess air.sa	Equation 1 of § 63.1568.	

TABLE 32 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS FOR HAP EMISSIONS FROM SULFUR RECOVERY UNITS NOT SUBJECT TO THE NEW SOURCE PERFORMANCE STANDARDS FOR SULFUR OXIDES—Continued

[As stated in § 63.1568(b)(2) and (3), you must meet each requirement in the following table that applies to you]

For * * *	You must * * *	Using * * *	According to these requirements * * *
	h. Establish each operating limit in Table 30 of this subpart that applies to you.	Data from the continuous parameter monitoring system.	
	i. Measure thermal incinerator: combustion zone temperature.	Data from the continuous parameter monitoring system.	Collect temperature monitoring data every 15 minutes during the entire period of the performance test; and determine and record the minimum hourly average temperature from all the readings.
	j. Measure thermal incinerator: oxygen concentration (percent, dry basis) in the vent stream.	Data from the continuous parameter monitoring system.	Collect oxygen concentration (percent, dry basis) data every 15 minutes during the entire period of the performance test; and determine and record the minimum hourly average percent excess oxygen concentration.
	k. If you use a continuous emission monitoring system, measure TRS concentration.	Data from continuous emission monitoring system.	Collect TRS data every 15 minutes for 24 consecutive operating hours. Reduce the data to 1-hour averages computed from four or more data points equally spaced over each 1-hour period.

TABLE 33 TO SUBPART UUU OF PART 63.—INITIAL COMPLIANCE WITH HAP EMISSION LIMITS FOR SULFUR RECOVERY UNITS

[As stated in § 63.1568(b)(5), you must meet each requirement in the following table that applies to you]

For * * *	For the following emission limit * * *	You have demonstrated initial compliance if * * *
1. Each new or existing Clause sulfur recovery unit part of a sulfur recovery plant of 20 long tons per day and subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2).	a. 250 ppmv (dry basis) SO_2 at zero percent excess air if you use an oxidation or reduction control system followed by incineration.	You have already conducted a performance test to demonstrate initial compliance with the NSPS and the hourly average SO_2 emissions measured by the continuous emission monitoring system are less than or equal to 250 ppmv (dry basis) at zero percent excess air. As part of the Notification of Compliance Status, you must certify that your vent meets the SO_2 limit. You are not required to do another performance test to demonstrate initial compliance. You have already conducted a performance evaluation to demonstrate initial compliance with the applicable performance specification. As part of your Notification of Compliance Status, you must certify that your continuous emission monitoring system meets the applicable requirements in § 63.1572. You are not required to do another performance evaluation to demonstrate initial compliance.
	b. 300 ppmv of reduced sulfur compounds calculated as ppmv SO_2 (dry basis) at zero percent excess air if you use a reduction control system without incineration.	You have already conducted a performance test to demonstrate initial compliance with the NSPS and the hourly average SO_2 emissions measured by your continuous emission monitoring system are less than or equal to 250 ppmv (dry basis) at zero percent excess air. As part of the Notification of Compliance Status, you must certify that your vent meets the SO_2 limit. You are not required to do another performance test do demonstrate initial compliance.

TABLE 33 TO SUBPART UUU OF PART 63.—INITIAL COMPLIANCE WITH HAP EMISSION LIMITS FOR SULFUR RECOVERY UNITS—Continued

[As stated in § 63.1568(b)(5), you must meet each requirement in the following table that applies to you]

For * * *	For the following emission limit * * *	You have demonstrated initial compliance if * * *
		You have already conducted a performance evaluation to demonstrate initial compliance with the applicable performance specification. As part of your Notification of Compliance Status, you must certify that your continuous emission monitoring system meets the applicable requirements in § 63.1572. You are not required to do another performance evaluation to demonstrate initial compliance.
2. Option 1: Elect NSPS. Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2).	a. 250 ppmv (dry basis) of SO_2 at zero percent excess air if you use an oxidation control system followed by incineration.	The hourly average SO_2 emissions measured by the continuous emission monitoring system over the 24-hour period of the initial performance test are not more than 250 ppvm (dry basis) at zero percent excess air; and your performance evaluation shows the monitoring system meets the applicable requirements in § 63.1572.
	b. 300 ppmv of reduced sulfur compounds calculated as ppmv SO_2 (dry basis) at zero percent excess air if you use a reduction control system without incineration.	The hourly average reduced sulfur emissions measured by the continuous emission monitoring system over the 24-hour period of the performance test no more than 300 ppmv, calculated as ppmv SO_2 (dry basis) at zero percent excess air; and your performance evaluation shows the continuous emission monitoring system meets the applicable requirements in § 63.1572.
3. Option 2: TRS limit. Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2).	300 ppmv of TRS compounds expressed as an equivalent SO_2 concentration (dry basis) at zero percent oxygen.	If you do not use a continuous emission monitoring system, the average TRS emissions measured using Method 15 over the period of the initial performance test are less than or equal to 300 ppmv expressed as equivalent SO_2 concentration (dry basis) at zero percent oxygen. If you use a continuous emission monitoring system the hourly average TRS emissions measured by the continuous emission monitoring system over the 24-hour period of the performance test are no more than 300 ppmv expressed as an equivalent SO_2 concentration (dry basis) at zero percent oxygen; and your performance evaluation shows the continuous emission monitoring system meets the applicable requirements in § 63.1572.

TABLE 34 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH HAP EMISSION LIMITS FOR SULFUR RECOVERY UNITS

[As stated in § 63.1568(c)(1), you must meet each requirement in the following table that applies to you.]

For * * *	For this emission limit * * *	You must demonstrate continuous compliance by * * *
1. Each new or existing Claus sulfur recovery unit part of a sulfur recovery plant of 20 long tons per or more and subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2).	a. 250 ppmv (dry basis) SO_2 at zero percent excess air if you use an oxidation or reduction control system followed by incineration.	Collecting the hourly average SO_2 monitoring data (dry basis, percent excess air) according to § 63.1572; maintaining the hourly average SO_2 concentration at or below the applicable limit; determining and recording each 12-hour average SO_2 day concentration; and reporting any 12-hour average SO_2 concentration greater than the applicable emission limitation in the compliance report required in § 63.1575.

TABLE 34 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH HAP EMISSION LIMITS FOR SULFUR RECOVERY UNITS—Continued

[As stated in § 63.1568(c)(1), you must meet each requirement in the following table that applies to you.]

For * * *	For this emission limit * * *	You must demonstrate continuous compliance by * * *
	b. 300 ppmv of reduced sulfur compounds calculated as ppmv (dry basis) SO_2 at zero percent excess air if you use a reduction control system without incineration.	Collecting the hourly average reduced sulfur and O_2 data according to § 63.1572; and maintaining the hourly average concentration of reduced sulfur at or below the applicable limit; and determining and recording each 12-hour average concentration of reduced sulfur; and reporting any 12-hour average concentration of reduced sulfur greater than the applicable emission limitation in the compliance report required in § 63.1575.
2. Option 1: Elect NSPS Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2).	a. 250 ppmv (dry basis) of SO_2 at zero percent excess air (for oxidation or reduction system followed by incineration).	Collecting the hourly average SO_2 monitoring data (dry basis, percent excess air) according to § 63.1572; maintaining the hourly average SO_2 concentration at or below the applicable limit; determining and recording each 12-hour average SO_2 concentration; and reporting any 12-hour average SO_2 concentration greater than the applicable emission limitation in the compliance report required in § 63.1575.
	b. 300 ppmv of reduced sulfur compounds calculated as ppmv SO_2 (dry basis) at zero percent excess air (for reduction control system without incineration).	Collecting the hourly average reduced sulfur (and air or O_2 dilution and oxidation data) according to § 63.1572; maintaining the hourly average SO_2 concentration at or below the applicable limit; reducing the monitoring data to 12-hour averages; and reporting any 12-hour average SO_2 concentration greater than the applicable limit in the compliance report required by § 63.1575.
3. Option 2: TRS limit Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2).	300 ppmv of TRS compounds, expressed as an SO_2 concentration (dry basis) at zero percent oxygen or reduced sulfur compounds calculated as ppmv SO_2 (dry basis) at zero percent excess air.	Collecting the hourly average TRS monitoring data according to § 63.1572, if you use a continuous emission monitoring system; maintaining the hourly average concentration of TRS at or below the applicable limit; reducing the TRS monitoring data to 12-hour averages; reporting any 12-hour average TRS greater than the applicable limit in the compliance report required by § 63.1575; and maintaining the hourly average concentration of TRS below the applicable limit if you use continuous parameter monitoring systems.

TABLE 35 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR HAP EMISSIONS FROM SULFUR RECOVERY UNITS

[As stated in § 63.1568(c)(1), you must meet each requirement in the following table that applies to you]

For * * *	For this operating limit * * *	You must demonstrate continuous compliance by * * *
1. Each new or existing Claus sulfur recovery unit part of a sulfur recovery plant of 20 long tons per day or more and subject to the NSPS for sulfur oxides in paragraph 40 CFR 60.104(a)(2).	Not applicable	Meeting the requirements of Table 34 of this subpart.
2. Option 1: Elect NSPS Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2).	Not applicable	Meeting the requirements of Table 34 of this subpart.
3. Option 2: TRS limit Each new or existing sulfur recovery unit (Claus or other type, regardless of size) not subject to the NSPS for sulfur oxides in 40 CFR 60.104(a)(2)	a. Maintain the daily average combustion zone temperature above the level established during the performance test.	Collecting the hourly and daily average temperature monitoring data according to § 63.1572; and maintaining the daily average combustion zone temperature at or above the limit established during the performance test.

TABLE 35 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS FOR HAP EMISSIONS FROM SULFUR RECOVERY UNITS—Continued

[As stated in § 63.1568(c)(1), you must meet each requirement in the following table that applies to you]

For * * *	For this operating limit * * *	You must demonstrate continuous compliance by * * *
	b. The daily average oxygen concentration in the vent stream (percent, dry basis) must not fall below the level established during the performance test.	Collecting the hourly and daily average O_2 monitoring data according to § 63.1572; and maintaining the average O_2 concentration above the level established during the performance test.

TABLE 36 TO SUBPART UUU OF PART 63.—WORK PRACTICE STANDARDS FOR HAP EMISSIONS FROM BYPASS LINES

[As stated in § 63.1569(a)(1), you must meet each work practice standard in the following table that applies to you]

Option	You must meet one of these equipment standards * * *
1. Option 1	Install and operate a device (including a flow indicator, level recorder, or electronic valve position monitor) to continuously detect, at least every hour, whether flow is present in the bypass line. Install the device at or as near as practical to the entrance to any bypass line that could divert the vent stream away from the control device to the atmosphere.
2. Option 2	Install a car-seal or lock-and-key device placed on the mechanism by which the bypass device flow position is controlled (e.g., valve handle, damper level) when the bypass device is in the closed position such that the bypass line valve cannot be opened without breaking the seal or removing the device.
3. Option 3	Seal the bypass line by installing a solid blind between piping flanges.
4. Option 4	Vent the bypass line to a control device that meets the appropriate requirements in this subpart.

TABLE 37 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS FOR BYPASS LINES

[As stated in § 63.1569(b)(1), you must meet each requirement in the following table that applies to you]

For this standard . . .	You must . . .
1. Option 1: Install and operate a flow indicator, level recorder, or electronic valve position monitor.	Record during the performance test for each type of control device whether the flow indicator, level recorder, or electronic valve position monitor was operating and whether flow was detected at any time during each hour of level the three runs comprising the performance test.

TABLE 38 TO SUBPART UUU OF PART 63.—INITIAL COMPLIANCE WITH WORK PRACTICE STANDARDS FOR HAP EMISSIONS FROM BYPASS LINES

[As stated in § 63.1569(b)(2), you must meet each requirement in the following table that applies to you]

For * * *	For this work practice standard * * *	You have demonstrated initial compliance if * * *
1. Each new or existing bypass line associated with a catalytic cracking unit, catalylic reforming unit, or sulfur recovery unit.	a. Option 1: Install and operate a device (including a flow indicator, level recorder, or electronic valve position monitor) to continuously detect, at least every hour, whether flow is present in the bypass line. Install the device at or as near as practical to the entrance to any bypass line that could divert the vent stream away from the control device to the atmosphere.	The installed equipment operates properly during each run of the performance test and no flow is present in the line during the test.
	b. Option 2: Install a car-seal or lock-and-key device placed on the mechanism by which the bypass device flow position is controlled (e.g., valve handle, damper level) when the bypass device is in the closed position such that the bypass line valve cannot be opened without breaking the seal or removing the device.	As part of the notification of compliance status, you certify that you installed the equipment, the equipment was operational by your compliance date, and you identify what equipment was installed.
	c. Option 3: Seal the bypass line by installing a solid blind between piping flanges.	See item 1.b. of this table.
	d. Option 4: Vent the bypass line to a control device that meets the appropriate requirements in this subpart.	See item 1.b. of this table.

TABLE 39 TO SUBPART UUU OF PART 63.—CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS FOR HAP EMISSIONS FROM BYPASS LINES

[As stated in § 63.1569(c)(1), you must meet each requirement in the following table that applies to you]

If you elect this standard * * *	You must demonstrate continuous compliance by * * *
1. Option 1: Flow indicator, level recorder, or electronic valve position monitor.	Continuously monitoring and recording whether flow is present in the bypass line; visually inspecting the device at least once every hour if the device is not equipped with a recording system that provides a continuous record; and recording whether the device is operating properly and whether flow is present in the bypass line.
2. Option 2: Car-seal or lock-and-key device	Visually inspecting the seal or closure mechanism at least once every month; and recording whether the bypass line valve is maintained in the closed position and whether flow is present in the line.
3. Option 3: Solid blind flange	Visually inspecting the blind at least once a month; and recording whether the blind is maintained in the correct position such that the vent stream cannot be diverted through the bypass line.
4. Option 4: Vent to control device	Monitoring the control device according to appropriate subpart requirements.
5. Option 1, 2, 3, or 4	Recording and reporting the time and duration of any bypass.

TABLE 40 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR INSTALLATION, OPERATION, AND MAINTENANCE OF CONTINUOUS OPACITY MONITORING SYSTEMS AND CONTINUOUS EMISSION MONITORING SYSTEMS

[As stated in § 63.1572(a)(1) and (b)(1), you must meet each requirement in the following table that applies to you]

This type of continuous opacity or emission monitoring system * * *	Must meet these requirements * * *
1. Continuous opacity monitoring system	Performance specification 1 (40 CFR part 60, appendix B).
2. CO continuous emission monitoring system	Performance specification 4 (40 CFR part 60, appendix B); span value of 1,000 ppm; and procedure 1 (40 CFR part 60, appendix F) except relative accuracy test audits are required annually instead of quarterly.
3. CO continuous emission monitoring system used to demonstrate emissions average under 50 ppm (dry basis).	Performance specification 4 (40 CFR part 60, appendix B); and span value of 100 ppm.
4. SO_2 continuous emission monitoring for sulfur recovery unit with oxidation control system or reduction control system; this monitor must include an O_2 monitor for correcting the data for excess air.	Performance specification 2 (40 CFR part 60, appendix B); span values of 500 ppm SO_2 and 10 percent O_2; use Methods 6 or 6C and 3A or 3B (40 CFR part 60, appendix A) for certifying O_2 monitor; and procedure 1 (40 CFR part 60, appendix F) except relative accuracy test audits are required annually instead of quarterly.
5. Reduced sulfur and O_2 continuous emission monitoring system for sulfur recovery unit with reduction control system not followed by incineration; this monitor must include an O_2 monitor for correcting the data for excess air unless exempted.	Performance specification 5 (40 CFR part 60, appendix B), except calibration drift specification is 2.5 percent of the span value instead of 5 percent; 450 ppm reduced sulfur and 10 percent O_2; use Methods 15 or 15A and 3A or 3B (40 CFR part 60, appendix A) for certifying O_2 monitor; if Method 3A or 3B yields O_2 concentrations below 0.25 percent during the performance evaluation, the O_2 concentration can be assumed to be zero and the O_2 monitor is not required; and procedure 1 (40 CFR part 60, appendix F), except relative accuracy test audits, are required annually instead of quarterly.
6. Instrument with an air or O2 dilution and oxidation system to convert reduced sulfur to SO_2 for continuously monitoring the concentration of SO_2 instead of reduced sulfur monitor and O_2 monitor.	Performance specification 5 (40 CFR part 60, appendix B); span value of 375 ppm SO_2 and 10 percent O_2; use Methods 15 or 15A and 3A or 3B for certifying O_2 monitor; and procedure 1 (40 CFR part 60, appendix F), except relative accuracy test audits, are required annually instead of quarterly.
7. TRS continuous emission monitoring system for sulfur recovery unit; this monitor must include an O_2 monitor for correcting the data for excess air.	Performance specification 5 (40 CFR part 60, appendix B).
8. O_2 monitor for oxygen concentration	If necessary due to interferences, locate the oxygen sensor prior to the introduction of any outside gas stream; performance specification 3 (40 CFR part 60, appendix B; span value for O_2 sensor is 10 percent; and procedure 1 (40 CFR part 60, appendix F), except relative accuracy test audits, are required annually instead of quarterly.

TABLE 41 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR INSTALLATION, OPERATION, AND MAINTENANCE OF CONTINUOUS PARAMETER MONITORING SYSTEMS

[As stated in § 63.1572(c)(1), you must meet each requirement in the following table that applies to you]

If you use a continuous parameter monitoring system to measure and record * * *	You must * * *
1. Voltage and secondary current or total power input.	At least monthly, inspect all components of the continuous parameter monitoring system for integrity and all electrical connections for continuity; and record the results of each inspection.

TABLE 41 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR INSTALLATION, OPERATION, AND MAINTENANCE OF CONTINUOUS PARAMETER MONITORING SYSTEMS—Continued

[As stated in § 63.1572(c)(1), you must meet each requirement in the following table that applies to you]

If you use a continuous parameter monitoring system to measure and record * * *	You must * * *
2. Pressure drop [1]	Locate the pressure sensor(s) in a position that provides a representative measurement of the pressure; minimize or eliminate pulsating pressure, vibration, and internal and external corrosion; use a gauge with an accuracy ± 2 percent over the operating range; check pressure tap for plugs at least once a week; using a manometer, check gauge calibration quarterly and transducer calibration monthly; for a semi-regenerative catalytic reforming unit, you can check the calibration quarterly and monthly or prior to regeneration, whichever is longer; record the results of each calibration; conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range, or install a new pressure sensor; at least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage; and record the results of each inspection.
3. Air flow rate, gas flow rate, or total water (or scrubbing liquid) flow rate.	Locate the flow sensor(s) and other necessary equipment such as straightening vanes in a position that provides representative flow; use a flow rate sensor with an accuracy within ±5 percent; reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances; conduct a flow sensor calibration check at least semiannually; for a semi-regenerative catalytic reforming unit, you can check the calibration at least semiannually or prior to regeneration, whichever is longer; record the results of each calibration; if you elect to comply with Option 3 (Ni lb/hr) or Option 4 (Ni lb/1,000 lbs of coke burn-off) for the HAP metal emission limitations in § 63.1564, install the continuous parameter monitoring system for gas flow rate as close as practical to the continuous opacity monitoring system; and if you don't use a continuous opacity monitoring system, install the continuous parameter monitoring system for gas flow rate as close as practical to the control device.
4. Combustion zone temperature	Install the temperature sensor in the combustion zone or in the ductwork immediately downstream of the combustion zone before any substantial heat exchange occurs; locate the temperature sensor in a position that provides a representative temperature; use a temperature sensor with an accuracy of ±1 percent of the temperature being measured, expressed in degrees Celsius (C) or ±0.5 degrees C, whichever is greater; shield the temperature sensor system from electromagnetic interference and chemical contaminants; if you use a chart recorder, it must have a sensitivity in the minor division of at least 20 degrees Fahrenheit; perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owners manual; following the electronic calibration, conduct a temperature sensor validation check, in which a second or redundant temperature sensor placed nearby the process temperature sensor must yield a reading within 16.7 degrees C of the process temperature sensor's reading; record the results of each calibration and validation check; conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range, or install a new temperature sensor; and at least monthly, inspect all components for integrity and all electrical connections for continuity, oxidation, and galvanic corrosion.
5. pH	Locate the pH sensor in a position that provides a representative measurement of pH; ensure the sample is properly mixed and representative of the fluid to be measured; check the pH meter's calibration on at least two points every 8 hours of process operation; at least monthly, inspect all components for integrity and all electrical components for continuity; record the results of each inspection; and if you use pH strips to measure the pH of the water exiting a wet scrubber as an alternative to a continuous parameter monitoring system, you must use pH strips with an accuracy of ±10 percent.
6. HCl concentration	Use a colormetric tube sampling system with a printed numerical scale in ppmv, a standard measurement range of 1 to 10 ppmv (or 1 to 30 ppmv if applicable), and a standard deviation for measured values of no more than ±15 percent. System must include a gas detection pump and hot air probe if needed for the measurement range.

[1] Not applicable to non-venturi wet scrubbers of the jet-ejector design.

TABLE 42 TO SUBPART UUU OF PART 63.—ADDITIONAL INFORMATION FOR INITIAL NOTIFICATION OF COMPLIANCE STATUS

[As stated in § 63.1574(d), you must meet each requirement in the following table that applies to you]

For * * *	You must provide this additional information * * *
1. Identification of affected sources and emission points.	Nature, size, design, method of operation, operating design capacity of each affected source; identify each emission point for each HAP; identify any affected source or vent associated with an affected source not subject to the requirements of subpart UUU.

TABLE 42 TO SUBPART UUU OF PART 63.—ADDITIONAL INFORMATION FOR INITIAL NOTIFICATION OF COMPLIANCE STATUS—Continued

[As stated in § 63.1574(d), you must meet each requirement in the following table that applies to you]

For * * *	You must provide this additional information * * *
2. Initial compliance	Identification of each emission limitation you will meet for each affected source, including any option you select (i.e., NSPS, PM or Ni, flare, percent reduction, concentration, options for bypass lines); if applicable, certification that you have already conducted a performance test to demonstrate initial compliance with the NSPS for an affected source; certification that the vents meet the applicable emission limit and the continuous opacity or that the emission monitoring system meets the applicable performance specification; if applicable, certification that you have installed and verified the operational status of equipment by your compliance date for each bypass line that meets the requirements of Option 2, 3, or 4 in § 63.1569 and what equipment you installed; identification of the operating limit for each affected source, including supporting documentation; if your affected source is subject to the NSPS, certification of compliance with NSPS emission limitations and performance specifications; a brief description of performance test conditions (capacity, feed quality, catalyst, etc.); an engineering assessment (if applicable); and if applicable, the flare design (e.g., steam-assisted, air-assisted, or non-assisted), all visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the Method 22 test.
3. Continuous compliance	Each monitoring option you elect; and identification of any unit or vent for which monitoring is not required; and the definition of ''operating day.'' (This definition, subject to approval by the applicable permitting authority, must specify the times at which a 24-hr operating day begins and ends.)

TABLE 43 TO SUBPART UUU OF PART 63.—REQUIREMENTS FOR REPORTS

[As stated in § 63.1575(a), you must meet each requirement in the following table that applies to you]

You must submit a(n) * * *	The report must contain * * *	You must submit the report * * *
1. Compliance report	If there are not deviations from any emission limitation or work practice standard that applies to you, a statement that there were no deviations from the standards during the reporting period and that no continuous opacity monitoring system or continuous emission monitoring system was inoperative, inactive, out-of-control, repaired, or adjusted; and if you have a deviation from any emission limitation or work practice standard during the reporting period, the report must contain the information in § 63.1575(d) or (e)	Semiannually according to the requirements in § 63.1575(b).

TABLE 44 TO SUBPART UUU OF PART 63.—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART UUU

[As stated in § 63.1577, you must meet each requirement in the following table that applies to you]

Citation	Subject	Applies to subpart UUU	Explanation
§ 63.1	Applicability	Yes.	Except that subpart UUU specifies calendar or operating day.
§ 63.2	Definitions	Yes.	
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4	Prohibited Activities	Yes.	
§ 63.5(a)–(c)	Construction and Reconstruction	Yes	In § 63.5(b)(4), replace the reference to § 63.9 with § 63.9(b)(4) and (5).
§ 63.5(d)(1)(i)	Application for Approval of Construction or Reconstruction—General Application Requirements.	Yes	Except, subpart UUU specifies the application is submitted as soon as practicable before startup but no later than 90 days (rather than 60) after the promulgation date where construction or reconstruction had commenced and initial startup had not occurred before promulgation.
§ 63.5(d)(1)(ii)		Yes	Except that emission estimates specified in § 63.5(d)(1)(ii)(H) are not required.
§ 63.5(d)(1)(iii)		No	Subpart UUU specifies submission of notification of compliance status.
§ 63.5(d)(2)		No.	
§ 63.5(d)(3)		Yes	Except that § 63.5(d)(3)(ii) does not apply.
§ 63.5(d)(4)		Yes.	
§ 63.5(e)	Approval of Construction or Reconstruction.		

TABLE 44 TO SUBPART UUU OF PART 63.—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART UUU—Continued

[As stated in § 63.1577, you must meet each requirement in the following table that applies to you]

Citation	Subject	Applies to subpart UUU	Explanation
§ 63.5(f)(1)	Approval of Construction or Reconstruction Based on State Review.	Yes.	
§ 63.5(f)(2)		Yes	Except that 60 days is changed to 90 days and cross-reference to § 63.9(b)(2) does not apply.
§ 63.6(a)	Compliance with Standards and Maintenance—Applicability.	Yes.	
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed Sources.	Yes.	
§ 63.6(b)(5)		Yes	Except that subpart UUU specifies different compliance dates for sources.
§ 63.6(b)(6)	[Reserved]	Not applicable.	
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources That Become Major.	Yes.	
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources.	Yes	Except that for subpart UUU specifies different compliance dates for sources subject to Tier II gasoline sulfur control requirements.
§ 63.6(c)(3)–(4)	[Reserved]	Not applicable.	
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources That Become Major.	Yes.	
§ 63.6(d)	[Reserved]	Not applicable.	
§ 63.6(e)(1)–(2)	Operation and Maintenance Requirements.	Yes.	
§ 63.6(e)(3)(i)–(iii)	Startup, Shutdown, and Malfunction Plan.	Yes.	
§ 63.6(e)(3)(iv)		Yes	Except that reports of actions not consistent with plan are not required within 2 and 7 days of action but rather must be included in next periodic report.
§ 63.6(e)(3)(v)–(viii)		Yes	The owner or operator is only required to keep the latest version of the plan.
§ 63.6(f)(1)–(2)(iii)(C)	Compliance with Emission Standards	Yes.	
§ 63.6(f)(2)–(iii)(D)		No.	
§ 63.6(f)(2)(iv)–(v)		Yes.	
§ 63.6(f)(3)		Yes.	
§ 63.6(g)	Alternative Standard	Yes.	
§ 63.6(h)	Opacity/VE Standards	Yes.	
§ 63.6(h)(2)(i)	Determining Compliance with Opacity/VE Standards.	No	Subpart UUU specifies methods.
§ 63.6(h)(2)(ii)	[Reserved]	Not applicable.	
§ 63.6(h)(2)(iii)		Yes.	
§ 63.6(h)(3)	[Reserved]	Not applicable.	
§ 63.6(h)(4)	Notification of Opacity/VE Observation Date.	Yes	Applies to Method 22 tests.
§ 63.6(h)(5)	Conducting Opacity/VE Observations	No.	
§ 63.6(h)(6)	Records of Conditions During Opacity/VE Observations.	Yes	Applies to Method 22 observations.
§ 63.6(h)(7)(i)	Report COM Monitoring Data from Performance Test.	Yes.	
§ 63.6(h)(7)(ii)	Using COM Instead of Method 9	No.	
§ 63.6(h)(7)(iii)	Averaging Time for COM during Performance Test.	Yes.	
§ 63.6(h)(7)(iv)	COM Requirements	Yes.	
§ 63.6(h)(8)	Determining Compliance with Opacity/VE Standards.	Yes.	

TABLE 44 TO SUBPART UUU OF PART 63.—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART UUU—Continued

[As stated in § 63.1577, you must meet each requirement in the following table that applies to you]

Citation	Subject	Applies to subpart UUU	Explanation
§ 63.6(h)(9)	Adjusted Opacity Standard	Yes.	
§ 63.6(i)(1)–(14)	Extension of Compliance	Yes	Not applicable to an affected source with Tier II compliance date. May be applicable to an affected source exempt from Tier II rule.
§ 63.6(i)(15)	[Reserved]	Not applicable.	
§ 63.6(i)(16)		Yes.	

[FR Doc. 02–7222 Filed 4–10–02; 8:45 am]

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April 11, 2002

Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7163–3]

RIN 2060–AH89

National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule and notice of revisions to list of categories of major and area sources and to the promulgation schedule for standards.

SUMMARY: This action adds wet-formed fiberglass mat production to the list of categories of major sources of hazardous air pollutants (HAP) published under section 112(c) of the Clean Air Act (CAA) and to the source category schedule for national emission standards for hazardous air pollutants (NESHAP).

This action promulgates the NESHAP for new and existing sources at wet-formed fiberglass mat production facilities. The primary organic HAP emitted by these facilities are formaldehyde, methanol, and vinyl acetate. Exposure to these HAP can cause reversible or irreversible adverse health effects including carcinogenic, respiratory, nervous system, developmental, reproductive, and/or dermal health effects. These NESHAP will reduce nationwide emissions of HAP from the drying and curing ovens at these facilities by 199 megagrams per year (Mg/yr) (219 tons per year or tons/yr), an approximate 74 percent reduction from the current level of emissions.

These NESHAP are based on the Administrator's determination that wet-formed fiberglass mat production facilities emit several of the 188 HAP listed in the CAA from the various process operations found within the industry, and that these facilities can be major sources of HAP. These NESHAP will protect the public by requiring all wet-formed fiberglass mat production facilities that are major sources to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT).

EFFECTIVE DATE: April 11, 2002. The incorporation by reference of certain publications listed in the subpart is approved by the Director of the Federal Register as of April 11, 2002.

ADDRESSES: *Docket.* Docket No. A–97–54 contains the information considered by EPA in developing this rule. This docket is located at the U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, SW., Room M–1500, Waterside Mall, Washington, DC 20460 and may be inspected from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For information concerning the final rule, contact Mr. Juan Santiago, Minerals and Inorganic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–1084, e-mail address: *santiago.juan@epa.gov.* For information regarding Method 316 or Method 318, contact Ms. Rima N. Howell; Emissions, Monitoring, and Analysis Division (MD–19); U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0443, e-mail address: *howell.rima@epa.gov.*

SUPPLEMENTARY INFORMATION: *Docket.* The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air and Radiation Docket and Information Center by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

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

Regulated Entities. Entities potentially regulated by this action are those industrial facilities that manufacture wet-formed fiberglass mat. Wet-formed fiberglass mat production is classified under Standard Industrial Classification (SIC) code 3229325; the NAICS code is 327212, Non-woven Fabric Mills. Regulated categories and entities are shown in table 1. This table is not intended to be exhaustive, but provides a guide for readers regarding entities likely to be regulated by the final rule. This table lists the types of entities that EPA is now aware could potentially be regulated by the final rule. To determine whether your facility would be regulated by the final rule, carefully examine the applicability criteria in § 63.2981 of the final rule. If there are any questions regarding the applicability of this action to a particular entity, consult Mr. Juan Santiago (See **FOR FURTHER INFORMATION CONTACT**).

TABLE 1.—REGULATED CATEGORIES AND ENTITIES

Category	SIC/NAICS	Description
Industrial	3229325/327212	Wet-formed fiberglass mat production facilities.

Judicial Review. These NESHAP for wet-formed fiberglass mat production facilities were proposed on May 26, 2000 (65 FR 34278). This action announces EPA's final decisions on the rule. Under section 307(b)(1) of the CAA, judicial review of the NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of April 11, 2002. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's final action may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Organization of this Document. The information in this preamble is organized as follows:

I. Background

A. Regulatory Background and Addition to Source Category List
B. What is the source of authority for development of NESHAP?
C. What are the health effects of pollutants emitted from this source category?
D. Stakeholder and Public Participation
II. What are the requirements of these NESHAP?
A. Do these NESHAP apply to me?
B. What emission limits must I meet?
C. What operating limits must I meet?
D. What are the performance test and initial compliance provisions of these NESHAP?
E. What monitoring requirements must I meet?
F. What are the notification, recordkeeping, and reporting requirements of these NESHAP?
III. What are the impacts of these NESHAP?
A. What are the air emission impacts?
B. What are the water and solid waste impacts?
C. Are there any additional environmental and health impacts?
D. What are the energy impacts?
E. What are the cost impacts?
F. What are the economic impacts?
IV. Summary of Changes Since Proposal
A. Operating Limits
B. Performance Test and Initial Compliance Provisions
C. Monitoring Requirements
D. Definitions
V. Summary of Responses to Major Comments
VI. Administrative Requirements
A. Executive Order 12866—Regulatory Planning and Review
B. Executive Order 13132—Federalism
C. Executive Order 13175—Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks
E. Unfunded Mandates Reform Act
F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601, *et seq.*
G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act
I. Congressional Review Act
J. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

I. Background

A. Regulatory Background and Addition to Source Category List

Section 112(c) of the CAA directs us to list each category of major and area sources, as appropriate, that emits one or more of the 188 HAP listed in section 112(b) of the CAA. The term ''major source'' is defined in section 112(a)(1) to mean:

* * * any stationary source or group of stationary sources located within a contiguous area under common control that emits or has the potential to emit, considering controls, in the aggregate 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants * * *.

We published an initial list of source categories on July 16, 1992 (57 FR 31576). Included on the initial source category list were major sources of HAP emissions from the asphalt roofing and processing industry.

As stated in the preamble to the proposed rule (65 FR 34279; May 26, 2000), during development of the asphalt roofing and processing NESHAP, industry representatives informed us of the existence of the wet-formed fiberglass mat production industry and its relationship to the asphalt roofing production industry. We proposed separate NESHAP for wet-formed fiberglass mat production because the production processes and pollutant emissions differ from those in the asphalt roofing industry. In addition, wet-formed fiberglass mat is produced at both stand-alone facilities and those collocated with asphalt roofing and processing facilities. The CAA provides that we may amend the source category list anytime. Consequently, we proposed adding wet-formed fiberglass mat production to the source category list under section 112(c) of the CAA.

Wet-formed fiberglass mat is the substrate for several asphalt roofing products. In wet-formed fiberglass mat production, glass fibers are bonded with an organic resin. The mat is formed as the resin is dried and cured in heated ovens. The majority of HAP emissions associated with wet-formed fiberglass mat production are emitted from the drying and curing oven exhaust. Based on HAP emission data obtained during the development of the rule, we have determined that all wet-formed fiberglass mat production facilities are major sources of HAP. Nine of the 14 facilities (10 of the 15 production lines) control the drying and curing oven exhaust emissions. Several of the five remaining facilities that do not control the drying and curing oven exhaust are also major sources of HAP.

We received no public comments that were opposed to adding wet-formed fiberglass mat facilities to the source category list. Therefore, today's action adds wet-formed fiberglass mat production to the list of source categories under section 112(c) of the CAA for which MACT standards are to be developed. Section 112(c)(5) requires that final standards for this source category be promulgated no later than May 26, 2002 (2 years after adding the source category to the list). Today's action satisfies that requirement.

B. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to promulgate standards for the control of HAP emissions from each source category listed under section 112(c). The statute requires the standards to reflect the maximum degree of reduction in emissions of HAP that is achievable taking into consideration the cost of achieving the emission reduction, any non-air quality health and environmental impacts, and energy requirements. This level of control is commonly referred to as MACT. The MACT standards can be based on the emission reductions achievable through application of measures, processes, methods, systems, or techniques including, but not limited to: (1) Reducing the volume of, or eliminating emissions of, such pollutants through process changes, substitution of materials, or other modifications; (2) enclosing systems or processes to eliminate emissions; (3) collecting, capturing, or treating such pollutants when released from a process, stack, storage, or fugitive emissions point; (4) design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in section 112(h) of the CAA; or (5) a combination of the above (see section 112(d)(2) of the CAA).

For new sources, MACT standards cannot be less stringent than the emission control achieved in practice by the best-controlled similar source (see section 112(d)(3) of the CAA). The MACT standards for existing sources can be less stringent than standards for new sources. However, they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources for categories and subcategories with 30 or more sources, or the best-performing five sources for categories or subcategories with fewer than 30 sources.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, MACT standards are designed to ensure that all major sources of air toxic emissions achieve the level of control already being achieved by the better-controlled and lower-emitting sources in each category or subcategory. This approach provides assurance to the public that each major source of toxic air pollution will be required to effectively control its emissions. At the same time, this

approach provides a level economic playing field, ensuring that facilities that employ cleaner processes and good emission controls are not disadvantaged relative to competitors with poorer controls.

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on consideration of the cost of achieving the emission reductions, any non-air quality health and environmental impacts, and energy requirements.

C. What Are the Health Effects of Pollutants Emitted From This Source Category?

The CAA was created, in part, ''to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population'' (see section 101(b) of the CAA). These NESHAP will protect public health by reducing emissions of HAP from wet-formed fiberglass mat production facilities.

Emission data collected during development of the NESHAP show that formaldehyde, vinyl acetate, and methanol are emitted from wet-formed fiberglass mat production facilities. The emission limits in these NESHAP will reduce emissions of these pollutants emitted from drying and curing ovens. As a result of controlling these HAP, the final NESHAP will also reduce emissions of volatile organic compounds (VOC). A summary of the potential health effects caused by exposure to these pollutants is presented in the preamble to the proposed rule (65 FR 34280; May 26, 2000).

D. Stakeholder and Public Participation

Various stakeholders were involved in the development of these standards. Individual wet-formed fiberglass mat production facilities and the Technical Association of the Pulp and Paper Industry (TAPPI) were consulted throughout the development of these standards. Representatives from State and Regional enforcement agencies, as well as representatives from other offices within EPA, participated in the regulatory development process by reviewing and commenting on the standards during development.

The NESHAP for wet-formed fiberglass mat production (40 CFR part 63, subpart HHHH) was proposed in the **Federal Register** on May 26, 2000 (65 FR 34278). The public comment period ended on July 25, 2000. Industry representatives, regulatory authorities, and environmental groups had the opportunity to comment on the proposed NESHAP and to provide additional information during the public comment period. Although the Agency offered the opportunity at proposal for oral presentation of data, views, or arguments concerning the proposed rule, no one requested a hearing and, therefore, a hearing was not held. The EPA received five letters containing comments on the proposed NESHAP from various groups including a State university and two trade associations representing industry. These final NESHAP reflect EPA's full consideration of the comments. The major public comments, along with EPA's responses to these comments on the proposed rule, are summarized in this preamble. A discussion of all public comments and EPA's responses is contained in the docket.

II. What Are the Requirements of These NESHAP?

A. Do These NESHAP Apply to Me?

These NESHAP apply to you if you own or operate an existing or newly constructed or reconstructed drying and curing oven located at a wet-formed fiberglass mat production facility that is a major source of HAP or that is collocated with a major source of HAP emissions. A major source means any source that has the potential to emit 10 tons/yr or more of any one HAP or 25 tons/yr or more of any combination of HAP.

You would not be subject to the NESHAP if your facility is determined to be an area source. An area source of HAP is any facility that is not a major source as defined in 40 CFR part 63, subpart A.

B. What Emission Limits Must I Meet?

These NESHAP regulate emissions of formaldehyde as a surrogate for total HAP emissions. Control of formaldehyde by thermal oxidation will also result in control of vinyl acetate and methanol. You must meet either a mass HAP emission limit or percentage reduction requirement for each drying and curing oven. The HAP emission limits are the same for new and existing drying and curing ovens. The HAP emission limits for the exhaust from new and existing drying and curing ovens are a maximum formaldehyde emission rate of 0.03 kilograms per megagram (kg/Mg) of wet-formed fiberglass mat produced (0.05 pounds per ton (lb/ton) of wet-formed fiberglass mat produced) or a minimum of 96 percent destruction efficiency of formaldehyde (as shown in Table 2). You can choose to comply with either the emission rate limit or the percent reduction requirement. If you use a thermal oxidizer or other control device to achieve the mass emission limit or percentage reduction requirement, you must collect and convey the emissions from each drying and curing oven to the control device according to the procedures specified in chapters 3 and 5 of ''Industrial Ventilation: A Manual of Recommended Practice.'' Section 63.3003 of the rule explains how to obtain a copy of this reference.

TABLE 2.—SUMMARY OF EMISSION LIMITS FOR NEW AND EXISTING DRYING AND CURING OVENS AT WET-FORMED FIBERGLASS MAT MANUFACTURING PLANTS

Process	Emission limit
Each existing and new drying and curing oven.	0.03 kg of formaldehyde per Mg of fiberglass mat (0.05 lb of formaldehyde per ton of fiberglass mat) or 96 percent reduction of formaldehyde.

C. What Operating Limits Must I Meet?

In addition to the emission limits, the final NESHAP contain specific operating limits, summarized in Table 3. The operating limits require you to maintain certain process or control device parameters within the levels established during the initial performance test. All operating limits must reflect operation of the process and control device during a performance test that demonstrates achievement of the emission limit during operating conditions that would achieve the highest potential emission rate.

TABLE 3.—SUMMARY OF OPERATING LIMITS FOR NEW AND EXISTING AFFECTED SOURCES

Affected source	Parameter, operation, or process to monitor	Operating limits
Each affected drying and curing oven (regardless of control technology).	Resin free-formaldehyde content, and	Use a resin with a free-formaldehyde content no greater than that of the resin used during the performance test, as determined by the resin purchase specification or test method.
	Application rate of urea-formaldehyde resin solids, and	Do not exceed the urea-formaldehyde resin solids application rate achieved during the performance test.
	Corrective action	Initiate corrective action within 1 hour of an established operating parameter deviation and complete and document action per operation, maintenance and monitoring plan.
Each affected drying and curing oven controlled by a thermal oxidizer.	Thermal oxidizer operating temperature, and	Maintain the average temperature for each 3-hour period at or above the average operating temperature achieved during the performance test.
	Thermal oxidizer operation	Operate the thermal oxidizer in accordance with the operation, maintenance, and monitoring plan; annually inspect the thermal oxidizer for structural and design integrity.
Each affected drying and curing oven controlled by process modifications or a control device other than a thermal oxidizer.	Process or control device parameters.	Maintain the process or control device parameter within the ranges established during the performance test.

You must also prepare an operation, maintenance, and monitoring (OMM) plan. The OMM plan must specify the parameters that must be monitored, how they will be monitored, the operating limits, and the corrective actions that must be followed whenever a monitored parameter deviates from the operating limits. The OMM plan shall be incorporated by reference into your title V permit.

Following the performance test, whenever you detect that a monitored parameter deviates from the established operating limits, you must initiate the corrective actions specified in the OMM plan within 1 hour. You must complete the corrective actions in an expeditious manner and implement them as specified in your OMM plan.

If you use a thermal oxidizer to achieve compliance with the emission limits, you must operate the thermal oxidizer so that the average operating temperature in any 3-hour block period does not fall below the average temperature established during the performance test. Additionally, an annual inspection of the thermal oxidizer is required to ensure that the structural and design integrity of the combustion chamber is maintained in the same condition as during the performance test. If you use process modifications or an add-on control device other than a thermal oxidizer to achieve compliance with the emission standards, you must maintain the process or control device parameter(s) within the operating limits that you established during the performance test. In addition, you must receive EPA Administrator approval for the alternative monitoring. You must also include the alternative monitoring and alternative operating limits in your OMM plan, which is incorporated by reference into your title V permit.

The operating limits also require you to maintain the free-formaldehyde content of the resin and the urea-formaldehyde resin solids application rate within the levels you established during a compliance test and as specified in your OMM plan. These operating limits apply regardless of which type of control you use to comply with the HAP emission limits.

D. What Are the Performance Test and Initial Compliance Provisions of These NESHAP?

You must conduct a performance test to demonstrate initial compliance with the emission limits. The performance test must be performed initially and every 5 years following the initial performance test. A performance test is also required to change the value or range of an operating limit. Under the final NESHAP, you must conduct the performance test while operating at the maximum urea-formaldehyde resin solids application rate and using the resin with the highest free-formaldehyde content. You must measure formaldehyde emissions as the average of three test runs using EPA Method 316 in appendix A of 40 CFR part 63, ''Sampling and Analysis for Formaldehyde from Stationary Sources in the Mineral Wool and Wool Fiberglass Industries'' or EPA Method 318 in appendix A of 40 CFR part 63, ''Extractive FTIR Method for the Measurement of Emissions from the Mineral Wool and Wool Fiberglass Industries.'' You must demonstrate compliance with either the mass emission limit or the percentage reduction requirement using the instructions and equations contained in the performance test requirements section of these final NESHAP.

If you use a thermal oxidizer to comply with these NESHAP, you must conduct a performance evaluation for the thermal oxidizer temperature monitoring device prior to the initial performance test to determine compliance. The evaluation must be conducted according to the procedures in 40 CFR 63.8(e) of the NESHAP general provisions. The temperature monitoring device must meet the following performance and equipment specifications: (1) The temperature monitoring device must be installed either at the exit of the combustion zone of each thermal oxidizer or at the location specified by the manufacturer, and the device must be installed in a location before any heat recovery or heat exchange equipment; (2) the recorder response range must include zero and 1.5 times the average temperature; and (3) the reference method must be a National Institute of Standards and Technology calibrated reference thermocouple-potentiometer system or an alternate reference, subject to the approval of the Administrator.

During the performance tests, you must continuously monitor the thermal oxidizer operating temperature and record the average temperature in 15-minute blocks during each 1-hour test run. After completion of the three required test runs, you must determine the 3-hour average operating temperature of the thermal oxidizer. If you use process modifications or an add-on control device other than a thermal oxidizer to comply with the emission limits, you must determine the

appropriate control device or process parameters to monitor to indicate whether compliance is being achieved. You must include the process or control device parameters, monitoring frequency, and the averaging periods in your site-specific test plan required by the 40 CFR part 63 general provisions prior to conducting your initial performance test. You may perform multiple tests to establish the least restrictive value or operating range for the selected parameters that still demonstrate compliance.

During the performance tests, you must also determine and record the average hourly urea-formaldehyde resin solids application rate during each of the three test runs and the free-formaldehyde content of the resin used to produce the mat.

The final NESHAP allow facilities subject to the NESHAP to conduct short-term experimental production runs, where the resin free-formaldehyde content or urea-formaldehyde resin solids application rate deviate from the levels established during previous performance tests, without conducting additional performance tests. You must apply for approval from the Administrator or delegated State agency to conduct such experimental production runs. The application must be made at least 30 days prior to conducting the run. The application would include information on the nature and duration of the test runs including plans to perform emissions testing. If you conduct such experimental production runs without first receiving approval from the Administrator or delegated State agency, then you must conduct a performance test under those same experimental run conditions to show that you were in compliance with the formaldehyde emission limit or percent reduction.

E. What Monitoring Requirements Must I Meet?

Continuous compliance is demonstrated after the initial performance test and between subsequent performance tests by monitoring operating parameters of emission control devices and processes. The allowable monitoring parameter values or ranges are determined during your initial performance test and must be included in your OMM plan.

If you use a thermal oxidizer to achieve compliance with the emission limits, you must: (1) Install, operate, calibrate, and maintain a device that continuously measures the operating temperature of each thermal oxidizer; and (2) determine and record the temperature in 15-minute and 3-hour block averages. This is typically done using a thermocouple (a standard feature on most thermal oxidizers) and a data logger.

If process modifications or a control device other than a thermal oxidizer is used to achieve compliance with the emission limits, you must monitor the parameters that were established during the performance test and included in your OMM plan.

You are also required to record the urea-formaldehyde-to-latex ratio in the binder, measure the loss-on-ignition value using the method in Appendix B to 40 CFR part 63, subpart HHHH, measure the weight per square of the wet-formed fiberglass mat produced and the hourly mat production rate, and calculate the urea-formaldehyde resin solids content of the product manufactured. The values of these parameters are determined in order to calculate the hourly average urea-formaldehyde resin solids application rate. You must also determine the free-formaldehyde content of the urea-formaldehyde resins using either the method in Appendix A to 40 CFR part 63, subpart HHHH, or the material supplier's documentation. Because these process parameters affect the amount of HAP emitted from the drying and curing oven, you must monitor them to ensure that operation of the production process is consistent with the conditions of the performance test, and that the production process does not vary in such a way as to increase HAP emissions from the drying and curing oven exhaust.

The final NESHAP contain provisions that allow you to change the thermal oxidizer operating temperature, operating parameters for add-on control devices other than thermal oxidizers, and process operating parameter values from those established using the initial and 5-year performance tests. These provisions allow you to make process changes or to demonstrate that different monitoring parameter values would more appropriately demonstrate compliance with the final emission limits. You may revise the monitoring or process parameter values by conducting additional performance tests to verify compliance at the revised operating levels. For example, if you intend to use a urea-formaldehyde resin with a higher free-formaldehyde content or operate at a higher urea-formaldehyde resin solids application rate, you must perform additional performance tests to verify compliance under conditions of the increased operating or process parameters. You must notify the Administrator in writing of your intention to conduct these additional performance tests and follow the procedures in 40 CFR 63.7.

F. What Are the Notification, Recordkeeping, and Reporting Requirements of These NESHAP?

All notification, recordkeeping, and reporting requirements in the 40 CFR part 63 general provisions, as well as additional requirements, apply to wet-formed fiberglass mat manufacturing facilities. The notification and reporting requirements include, but are not limited to: (1) Initial notification of applicability of the rule, notification of the dates for conducting the performance test, and notification of compliance status including the measured range of each monitored parameter and the operating limits established during the performance test; (2) a report of performance test results; (3) periodic reports of any startup, shutdown, and malfunction events that occur; and (4) semiannual reports of deviations and continuous monitoring system performance. A deviation is any instance when any requirement or obligation established by the rule including, but not limited to, the emission limits and operating limits, is not met. If no deviations occur during a semiannual reporting period, you must submit a semiannual report stating that the affected source has been in continuous compliance during that period. If deviations from established monitoring parameters occur, the frequency of submitting the semiannual reports becomes quarterly until a request to return to semiannual reporting is approved by the Administrator. You cannot submit the request to reduce the frequency of the reporting period until the affected source's reports of deviations and continuous monitoring system performance remain continually within the established parameter ranges for 1 full year.

When using a thermal oxidizer or other control device to reduce HAP emissions, you will have to make your startup, shutdown, and malfunction plan available for inspection if the Administrator requests to see it, but you do not have to submit it to the Administrator for approval. You must keep the plan for the life of the affected source or until the source is no longer subject to the rule. If you revise the plan, you must keep the previous superseded versions on record for 5 years following the revision.

You must maintain records of the following, as applicable: (1) All results of performance tests; (2) thermal oxidizer operating temperature; (3) process parameters for drying and

curing ovens that comply with the emission limits using process modifications or an add-on control device other than a thermal oxidizer; (4) free-formaldehyde content of the resin; (5) urea-formaldehyde-to-latex ratio; (6) loss-on-ignition value of the wet-formed fiberglass mat produced; (7) urea-formaldehyde resin solids content per ton of the wet-formed fiberglass mat produced; (8) weight of the mat per roofing square; (9) average hourly wet-formed fiberglass mat production rate; (10) for operating parameter deviations, the date, time, and duration of each deviation, the date and time corrective actions were initiated and completed, a brief description of the cause of the deviation, and a description of the corrective actions taken to return the parameter to the limit or within the range established in the OMM plan and during the most recent performance test; (11) the OMM plan; (12) the occurrence and duration of each startup, shutdown, or malfunction of the control device; (13) actions taken during startup, shutdown, and malfunction that are different from the procedures specified in the affected source's startup, shutdown, and malfunction plan; (14) maintenance and inspections performed on control devices; and (15) any other information required to be recorded by the general provisions.

The NESHAP general provisions require that records be maintained for at least 5 years from the date of each record. You must retain the records onsite for at least 2 years but you may retain the records offsite for the remaining 3 years. The records must be readily available and in a form suitable for efficient inspection and review. The files may be retained on paper, microfilm, microfiche, a computer, computer disks, or magnetic tape. Reports may be made on paper or on a labeled computer disk using commonly available and compatible computer software.

III. What Are the Impacts of These NESHAP?

A. What Are the Air Emission Impacts?

At the current level of control, nationwide emissions of HAP from the 14 facilities in the industry are estimated to be approximately 268 Mg/yr (295 tons/yr). Under the final NESHAP, it is expected that thermal oxidizers will be added to the five uncontrolled drying and curing ovens, and that existing thermal oxidizers will be replaced with new units for three out of the ten controlled drying and curing ovens. This would result in an estimated reduction in nationwide HAP emissions of 199 Mg/yr (219 tons/yr).

Formaldehyde emissions from wet-formed fiberglass mat manufacturing lines account for about 65 percent of the baseline HAP emissions. Methanol emissions account for approximately 30 percent, with vinyl acetate comprising the remaining 5 percent of the baseline HAP emissions. (These percentages are national averages. The actual emission profiles from individual lines will vary with the type of resin and binder used.) Estimated nationwide emissions of formaldehyde from existing wet-formed fiberglass mat production lines are 174 Mg/yr (192 tons/yr) at the current level of control. Implementing the NESHAP will reduce nationwide formaldehyde emissions from existing sources by about 130 Mg/yr (143 tons/yr), and combined emissions of vinyl acetate and methanol will be reduced by 70 Mg/yr (77 tons/yr).

Secondary emissions of nitrogen oxides (NO_X) from thermal oxidizer controls are formed as a result of natural gas combustion. Total emissions of NO_X from all affected sources are estimated to increase by about 15 Mg/yr (16 tons/yr).

B. What Are the Water and Solid Waste Impacts?

Because compliance with the NESHAP is based on the use of thermal oxidizers, no water pollution or solid waste impacts would result from the NESHAP.

C. Are There Any Additional Environmental and Health Impacts?

Reducing HAP emissions will lower occupational HAP and VOC exposure levels. The operation of thermal oxidizers may increase occupational noise levels in the five facilities that currently do not control HAP emissions.

D. What Are the Energy Impacts?

Thermal oxidizers require electrical energy to operate fans. Additional electrical energy requirements are estimated to be 4,260 megawatt hours per year (MW-hr/yr). An additional 275,000 million British thermal units per year (Btu/yr) of natural gas are estimated to be required for eight additional thermal oxidizers that would be added to existing sources. The total additional energy (electricity and natural gas) required as a result of the NESHAP is 290 billion Btu/yr in the fifth year following promulgation of the NESHAP.

We do not have sufficient information to predict the number of new glass mat production lines that will be built and come on line in the 5 years after promulgation or to predict the energy needs for control devices on those new lines. However, the average energy need for the control device on a new line would be about the same as the average energy need for a control device on an existing line, or about 530 MW-hr/yr of electricity and 34,400 million Btu of natural gas.

E. What Are the Cost Impacts?

Cost impacts of the final NESHAP for drying and curing ovens were analyzed using site-specific information included in the TAPPI survey responses coupled with procedures from the ''OAQPS Cost Manual.'' For some facilities where site-specific data necessary for estimating costs (e.g., a vent flow rate) were not available, average factors developed from industry survey data were used to estimate the missing data.

The total capital costs to achieve the final NESHAP are estimated to be $5,272,000. These capital cost impacts arise from the purchase and installation of eight thermal oxidizers—five thermal oxidizers for the five facilities without existing controls and three thermal oxidizers for three facilities that must replace existing thermal oxidizers that cannot meet the final NESHAP. The average capital cost of installing a new thermal oxidizer is estimated at $716,000 per oxidizer. The capital cost estimate to install a new thermal oxidizer to achieve compliance includes the cost of auxiliary burners, combustion chambers, primary heat exchangers, weather-tight housing and insulation, a fan, flow and temperature controls, a stack, and structural supports.

The monitoring requirements for the thermal oxidizer operating temperature are not current industry practice and are expected to impose additional costs on facilities with existing thermal oxidizers. To estimate the impact of the additional monitoring equipment (i.e., a data logging system), a cost of $7,000 ($1,000 for each of the seven facilities with an existing thermal oxidizer that is achieving the NESHAP) was included in the capital cost estimate. No additional capital costs were estimated for monitoring equipment for the new thermal oxidizers since temperature monitors and recording devices are standard equipment and are included in the cost estimates for new thermal oxidizers.

The total annualized cost of the final NESHAP for eight new thermal oxidizers is about $2,414,000. The average annual cost for a typical facility that installs a new thermal oxidizer is $302,000. The annualized cost estimate includes the cost of operation,

maintenance, supervisory labor, maintenance materials, utilities, administrative charges, taxes, insurance, and capital recovery.

F. What Are the Economic Impacts?

Fourteen facilities owned by nine different companies produce wet-formed fiberglass mat domestically. All of these facilities may potentially be affected by the NESHAP because they are major sources or are collocated with other sources (e.g., asphalt roofing plants) that together may be major sources.

The estimated nationwide annualized cost of the NESHAP is $1.595 million. This cost estimate represents approximately 0.069 percent of the 1995 sales revenues for domestically produced wet-formed fiberglass mat. Based upon this estimate, it is reasonable to assume that market price increases and production decreases resulting from the final NESHAP are likely to be very small. Thus, we conclude that the final NESHAP are not likely to have a significant economic impact on the wet-formed fiberglass mat industry as a whole or on secondary markets such as the labor market and foreign trade.

We performed a streamlined economic analysis to determine facility-specific impacts. The facility-specific impacts are examined by calculating the ratio of the estimated annualized costs of emission controls for each facility to the estimated revenues per facility (i.e., a cost-to-sales ratio) to assess the likelihood of facility closures and employment impacts. Cost-to-sales ratios refer to the change in the cost of emission controls divided by the sales revenue of wet-formed fiberglass mat, the goods produced in the process for which additional pollution control is required. This ratio can be estimated for either individual firms or as an average for some set of firms such as affected small business firms. While it has different significance for different market situations, it is a good rough gauge of potential impact. If costs for the individual (or group of) firms are completely passed onto the purchasers of the good(s) being produced, the ratio is an estimate of the price change (in percentage form after multiplying the ratio by 100). If costs are completely absorbed by the producer, this ratio is an estimate of changes in pretax profits (in percentage form after multiplying the ratio by 100). The distribution of cost-to-sales ratios across the whole market, the competitiveness of the market, and profit-to-sales ratios are among the obvious factors that may influence the significance of any particular cost-to-sales ratio for an individual facility.

For these NESHAP, a cost-to-sales ratio exceeding 1 percent was determined to be an initial indicator of the potential for a significant facility impact. Each of the 14 facilities affected by the final NESHAP has cost-to-sales ratios of less than 1 percent of sales. Therefore, the facility-specific impacts are not considered to be significant for any facility affected by the NESHAP. No facility is likely to close as a result of the final NESHAP. Facilities in the wet-formed fiberglass mat production industry are likely to increase the price charged for the product in response to market price changes, to absorb the costs with no price increase, or to respond with a combination of these alternatives. The economic impacts to consumers and producers of wet-formed fiberglass mat are anticipated to be minimal. The generally small scale of the impacts suggests that there will also be no significant impacts on markets for the products made using wet-formed fiberglass mat. For more information, consult the economic impact report entitled ''Economic Impact Analysis for the Proposed National Emission Standard for Hazardous Air Pollutants from the Production of Wet-Formed Fiberglass Mat,'' January 1999 (Docket A–97–54).

IV. Summary of Changes Since Proposal

We have made changes in the final NESHAP for wet-formed fiberglass mat production facilities in response to comments on the proposed rule. The principal changes made since proposal are summarized below. Additional discussion of changes and the rationale for these changes is presented in section V of this preamble.

A. Operating Limits

In § 63.2984, we have removed the operating limits for binder urea-formaldehyde (UF) content, UF resin solids content, UF resin solids per ton of product, product loss-on-ignition, and production rate. They have been replaced with an operating limit for maximum hourly urea-formaldehyde resin solids application rate, measured as the urea-formaldehyde resin solids left in the product after curing.

B. Performance Test and Initial Compliance Provisions

We revised § 63.2993 of the final rule to allow the use of either EPA Method 318, ''Extractive FTIR Method for the Measurement of Emissions from the Mineral Wool and Wool Fiberglass Industries'' for measuring formaldehyde concentrations, or EPA Method 316,''Sampling and Analysis for Formaldehyde Emissions from Stationary Sources in the Mineral Wool and Wool Fiberglass Industries.''

C. Monitoring Requirements

In § 63.2984(a), we revised the rule to clarify that a deviation of a process or control device parameter from a level established during a performance test is a deviation from an operating limit and is separately enforceable from the emission limit in § 63.2983. We also added a definition of *Deviation* in § 63.3004 of the final rule.

In response to comments, we revised § 63.2984(d) of the final rule to delete the requirement to reference the operating limits in the 40 CFR part 70 operating permit application. Instead, you will include the operating limits in the OMM plan and reference the OMM plan in the 40 CFR part 70 operating permit application. You must also include the operating limits or ranges in the notification of compliance status and the performance test report required under § 63.3000(b) and (d), respectively.

In the final rule, we have deleted § 63.2988 and the requirement that you have your OMM plan approved by the Administrator. You must include in your 40 CFR part 70 operating permit a requirement that you develop an OMM plan and operate according to it at all times. To revise the operating limits specified in your OMM plan, you must conduct a new performance test and include the revised operating limits in the notification of compliance status and performance test results submitted to the Administrator after the test. You must also include the revised operating limits in the revised OMM plan. You may begin operating according to the revised operating limits as soon as you have completed the performance test demonstrating compliance.

We revised § 63.2994(b)(1) of the final rule to allow the gas temperature monitoring device to be installed either at the exit of the combustion zone or at the location specified by the manufacturer. However, the temperature monitoring device must be installed in a location before any heat recovery or heat exchange equipment, and it must remain in the same location for both the performance test and the continuous monitoring of the temperature.

In response to comments, we have revised the monitoring requirements in § 63.2996 so that you must monitor and record the data needed to calculate the hourly urea-formaldehyde resin solids application rate.

D. Definitions

In response to comments, we replaced the definition of *Binder formulation urea formaldehyde content* with a definition of *Urea formaldehyde content in binder formulation* for clarification purposes.

V. Summary of Responses to Major Comments

We received five comment letters on the proposed NESHAP for wet-formed fiberglass mat production. A copy of each comment letter is available for public inspection in the docket for the rulemaking.

We reviewed and carefully considered all of the comments received and made changes to the rule where appropriate. A summary of responses to major comments received on the proposed rule is presented below. Additional discussion of our responses to public comments is presented in the document ''National Emission Standards for Wet-Formed Fiberglass Mat Production—Background for Promulgated Standards, Comment and Response Document'' which is in the docket.

Comment: One commenter stated that basing the operating limits and monitoring requirements on resin free-formaldehyde content, binder UF content, resin UF solids content, resin UF solids content per ton of product, and product loss-on-ignition (LOI) is not practical because most manufacturers do not have a single product that has the maximum value for all these parameters. Therefore, the facility operators would need to perform several performance tests using different products with the maximum for each of these variables.

The commenter recommended that EPA specify an operating standard and monitoring requirement only for urea-formaldehyde (dry) weight per roofing square (100 square feet) of product. According to the commenter, formaldehyde is emitted as the UF binder cures and bonds the glass fibers together into a mat. The greater the amount of UF binder solids per square of mat, the greater the formaldehyde emissions per square of mat, according to the commenter.

The commenter suggested using the following equation for calculating the pounds of UF solids per square of mat:

$$\frac{\text{UF Solids}}{\text{Square of Mat}} = \text{LOI} \times \text{UFL} \times \text{MWs}$$

Where:

LOI = loss on ignition (percent);
UFL = UF-to-latex ratio in the binder (percent of UF solids in total combined solids for UF and latex);
MW = weight of the mat per square (pounds per roofing square).

Response: We agree with the commenter that the suggested monitoring parameters better predict potential emissions than those in the proposed standards and offer greater operating flexibility. We have revised the testing, monitoring, and operating limit requirements in the final rule to reflect the approach recommended by the commenter.

The final rule establishes an operating limit for UF solids hourly application rate. This operating limit is based on the equation suggested by the commenter, with the addition of a term for the glass mat production rate (squares per hour) so the hourly UF solids application rate is calculated.

You must conduct the performance test while producing a product with the greatest hourly UF solids application rate. The hourly UF solids application rate is the product of UF solids per square of mat times the hourly production rate in squares. The hourly UF solids application rate achieved during the initial performance test will become an operating limit that you cannot exceed after the test. After the compliance test, you must monitor the parameters used to calculate the hourly UF solids application rate and use Equation 3 of § 63.2995 of the final rule to ensure compliance with the operating limit for hourly UF solids application rate.

We continue to believe that the resin free-formaldehyde content is an important variable affecting emissions. Therefore, the final rule still requires an operating limit for the resin free-formaldehyde content. The operating limit established for the resin free-formaldehyde content during the initial performance test must not be exceeded after the initial performance test. Continuous compliance with the operating limit will be determined through resin purchase specifications and records. These records are the minimum data requirements necessary to verify continuous compliance with the operating limit.

Comment: One commenter asked EPA to revise the provisions of § 63.2989(a)(4) and (b) for changing an approved OMM plan. As currently written, a facility that has proposed changes to its approved plan must continue to operate according to the approved plan pending the Administrator's approval of the proposed changes. The commenter advocates that a facility be allowed to operate according to the proposed changes, pending the Administrator's approval of the revised plan, after they have demonstrated compliance with the formaldehyde emission limits. The commenter stated that the suggested change is consistent with the title V permit application shield.

Response: The EPA believes the commenter is incorrect that there is a corresponding provision for permit revisions in title V of the CAA or the permit regulations in 40 CFR part 70. The permit application shield applies only to the original permit application and renewals. The shield protects the facility from enforcement actions for operating without a permit in cases where the facility submits an application on time, but there are delays in issuing the permit. However, the permit application shield does not apply to permit revisions. A facility owner or operator submitting an application to revise their operating permit must operate under the approved permit until the revised permit is approved.

However, we have revised the provisions of § 63.2988 to delete the provisions requiring the Administrator's approval of a facility's OMM plan. We have also modified the provisions of § 63.2989(a)(1) through (4) to allow a facility to make changes to the OMM plan without the requirement for obtaining the Administrator's approval. Changes in operating limits still require another performance test to verify compliance. In addition, we have revised § 63.2984(d) of the final rule to delete the requirement to reference the operating standards and their allowable ranges or limits in the 40 CFR part 70 permit. Instead, your OMM plan must be incorporated by reference in your title V permit. These changes allow you to revise the allowable ranges or limits of the operating standards without reopening your permit or going through an approval process. We have also added paragraph (c) to § 63.2989 which provides that if you can anticipate potential changes to operating conditions or multiple operating conditions while demonstrating compliance during an initial or most recent performance test, then those anticipated operating conditions could be accounted for in the OMM plan, and the plan would not need to be revised later. The purpose of the OMM plan is to ensure compliance while at the same time allowing the owner or operator of the affected source flexibility to operate under representative conditions for the affected source.

Comment: One commenter asked EPA to revise § 63.2993 to allow the use of EPA Method 318, ''Extractive Fourier Transfer Infrared Spectrometry (FTIR)

for Measurement of Emissions from the Mineral Wool and Wool Fiberglass Industries,'' for measuring formaldehyde concentrations.

Response: We agree with the commenter that facilities should be able to use FTIR, as specified in EPA Method 318, to measure formaldehyde concentrations. Therefore, § 63.2993 of the final rule has been revised to allow the use of either EPA Method 316, ''Sampling and Analysis for Formaldehyde Emissions from Stationary Sources in the Mineral Wool and Wool Fiberglass Industries,'' or EPA Method 318 (FTIR) to measure formaldehyde concentrations.

Comment: The proposal preamble stated that EPA estimates that only one of the two small business companies in the glass mat industry will have to install an add-on control device at its plant (65 FR 34289). As stated in the preamble, EPA estimates that the annual control cost for this one small business would not exceed 1 percent of total sales of the company. A representative of the facility in question disagreed with EPA's estimate and stated that if this facility is required to install a thermal oxidizer, the cost-to-sales ratio would be greater than 1 percent of sales. The comment letter and included test report for this glass mat facility indicated that total HAP emissions from the wet-formed fiberglass mat production line at the plant are less than 10 tons per year.

Response: We estimated the annualized cost of a thermal oxidizer for the facility in question based on the volumetric flow rate from the drying and curing oven submitted by the facility in response to the EPA survey. We had no other site-specific information that would have resulted in a more accurate cost estimate. The survey response from the facility reported a volumetric flow rate from the glass mat line stack of 747 standard cubic feet per minute (scfm). Based on this flow rate, we estimated that the total annual cost would be 0.344 percent of annual sales for the company. However, the flow rate reported in the test report submitted with the comment letter was 2,520 scfm. We revised the estimated annual add-on control costs using this higher flow rate, but the revised annual cost is still less than the threshold (1.0 percent of sales) used as an indicator in considering whether the rule has a significant economic impact on small businesses.

Since the estimated cost as a percentage of sales is relatively minimal, it is anticipated that the final rule will not have a significant impact on this company's profitability. Nonetheless, EPA has tried to reduce the impact of this rule on small entities by providing flexibility by offering a choice of compliance and monitoring options. Compliance options include mass emission limits or percent reduction standards. Compliance with the standards can be achieved through the use of a thermal oxidizer, other control devices, or process modifications that meet the standards. Finally, if the facility in question, after considering all operations present at the source, is not a major source of HAP emissions, it would not be subject to the NESHAP and would have no compliance costs as a result of the standards.

VI. Administrative Requirements

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a significant regulatory action under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. 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 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 rule. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the EPA consults with State and local officials early in the process of developing the rule.

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

Today's rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This is because today's rule applies to affected sources in the wet-formed fiberglass mat industry, not to State or local governments. Nor will State law be preempted, or any mandates be imposed on State or local government. Thus, the requirements of section 6 of the Executive Order do not apply to today's final rule. The EPA notes, however, that although not required to do so by this Executive Order (or otherwise), EPA did consult with State and local officials during development of today's final rule.

C. Executive Order 13175—Consultation and Coordination with Indian Tribal Governments

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

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No known wet-formed fiberglass mat production facility is located within the jurisdiction of any tribal government. Thus, Executive Order 13175 does not apply to this rule.

D. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns the environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it establishes an environmental standard based on available technology rather than reduction of health risk. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, today's final rule has been determined not to be a economically significant regulatory action as defined by Executive Order 12866.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, 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 the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this final 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 1 year. The EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments since it contains no requirements that apply to such governments or that impose obligations upon them. The total nationwide capital cost for the standard is estimated at $5.3 million; the annualized nationwide cost is estimated at $2.4 million. Thus, today's final rule is not subject to the requirements of the UMRA.

F. 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 conduct 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 that has less than 750 employees; (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 the final rule on small entities, we have determined that only two of the nine companies producing wet-formed fiberglass mat are small businesses. One of these small businesses is not anticipated to incur emission control costs because it already has controls in place which should achieve the MACT emission levels. Therefore, only one small firm in the wet-formed fiberglass mat production industry is likely to incur emission control costs as a result of the rule. After the proposed rule was published, the company submitted information indicating that HAP emissions from the facility's glass mat line are less than 10 tons per year and, thus, it is not a major source. However, this particular glass mat line is collocated with an asphalt roofing manufacturing facility and emissions from all collocated sources, in aggregate, must be considered in determining whether a source is a major source. The company also stated in their letter that if this facility is required to install a thermal oxidizer as a result of the rule, their cost-to-sales ratio would be greater than 1 percent. As a result, EPA revised the estimated annual add-on control costs for this facility using the higher flow rate of 2,520 scfm as reported in the comment from this facility. However, the revised annual cost-to-

sales ratio is still less than the threshold (1.0 percent of sales) used as an indicator in considering whether the rule has a significant economic impact on small businesses. As a result of the increased costs of emission controls, this small entity in the affected industry will likely either increase the price of its product in response to a market change in price, will absorb the cost increase with no price increase, or will respond with a combination of these responses. Since the estimated costs as a percentage of sales are relatively minimal, it is anticipated that the rule will not have a significant impact on this company's profitability if, indeed, it is a major source and subject to the NESHAP.

Although this rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of the rule on small entities by providing flexibility by offering a choice of compliance and monitoring options. Compliance options include mass emission limits or percent reduction standards. Compliance with the final standards can be achieved through the use of a thermal oxidizer or other control device. Pollution prevention practices, such as process modifications, are also included in the rule.

G. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1964.01), and a copy may be obtained from Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr.* The information requirements are not effective until OMB approves them.

The information requirements contained in the NESHAP are necessary to determine initial and continuous compliance with the emission standards. The information requirements include the notification, recordkeeping, and reporting requirements of the NESHAP general provisions, authorized under section 114 of the CAA (42 U.S.C. 7414), which are mandatory for all owners or operators subject to national emission standards. All information submitted to EPA for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B. The rule does not require any notifications or reports beyond the minimum required by the general provisions. Subpart HHHH requires additional records of information specific to the wet-formed fiberglass mat production industry which are needed to determine compliance with the rule.

The annual public reporting and recordkeeping burden for this collection is estimated at 2,983 labor hours per year at an annual cost of $98,183. This estimate includes an initial performance test and report (with repeat tests where needed); one-time preparation of a startup, shutdown, and malfunction plan with semiannual reports of any event in which the procedures in the plan were not followed; semiannual deviation reports; notifications; the OMM plan; and recordkeeping. The annualized capital cost associated with monitoring requirements is estimated at $2,300.

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

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), Public Law 104–113, directs all Federal Agencies to use voluntary consensus standards in regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (VCS) are technical standards (such as materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standard bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

Consistent with the NTTAA, the EPA conducted searches to identify voluntary consensus standards for the EPA's emissions sampling and analysis reference methods and industry recommended materials analysis procedures cited in this rule. Candidate voluntary consensus standards for materials analysis were identified for product loss-on-ignition and free-formaldehyde content. Consensus comments provided by industry experts were that the candidate standards did not meet industry materials analysis requirements. Therefore, EPA has determined that these VCS were impractical for the wet-formed fiberglass mat production NESHAP. The EPA, in consultation with TAPPI, has formulated industry-specific materials analysis consensus standards which were proposed along with the proposed rule and are published with the final rule as appendix A and appendix B.

The EPA search to identify VCS for the EPA's emissions sampling and analysis reference methods cited in this rule identified six candidate standards that appeared to have possible use in lieu of EPA standard reference methods. However, after reviewing available standards, EPA determined that four of the candidate consensus standards identified for measuring emissions of the HAP or surrogates subject to emission limits in the rule would not be practical due to lack of equivalency, documentation, and validation data. Two of the remaining candidate consensus standards are new standards under development that EPA plans to follow, review and consider adopting at a later date.

Section 63.2993 of subpart HHHH lists the EPA testing methods. These testing methods have been used by States and industry for more than 10 years.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the SBREFA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Therefore, we will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal**

Register. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2), and therefore will be effective April 11, 2002.

J. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The EPA has determined that this rule will not affect in a material way productivity, competition, or prices in the energy sector. The rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency regarding energy. In addition, it will not raise novel legal or policy issues related to energy arising out of legal mandates, the President's priorities, or the principles set forth in Executive Orders 12866 and 13211.

List of Subjects in 40 CFR Part 63

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

Dated: March 19, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

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

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

2. Part 63 is amended by adding subpart HHHH to read as follows:

Subpart HHHH—National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production

Sec.

What This Subpart Covers

63.2980 What is the purpose of this subpart?
63.2981 Does this subpart apply to me?
63.2982 What parts of my plant does this subpart cover?

Emission Limitations

63.2983 What emission limits must I meet?
63.2984 What operating limits must I meet?
63.2985 When do I have to comply with these standards?
63.2986 How do I comply with the standards?

Operation, Maintenance, and Monitoring Plan

63.2987 What must my operation, maintenance, and monitoring (OMM) plan include?
63.2988 [Reserved]
63.2989 How do I change my (OMM) plan?
63.2990 Can I conduct short-term experimental production runs that cause parameters to deviate from operating limits?

Testing and Initial Compliance Requirements

63.2991 When must I conduct performance tests?
63.2992 How do I conduct a performance test?
63.2993 What test methods must I use in conducting performance tests?
63.2994 How do I verify the performance of monitoring equipment?
63.2995 What equations must I use to determine compliance?

Monitoring Requirements

63.2996 What must I monitor?
63.2997 What are the requirements for monitoring devices?

Notifications, Reports, and Records

63.2998 What records must I maintain?
63.2999 In what form and for how long must I maintain records?
63.3000 What notifications and reports must I submit?

Other Requirements and Information

63.3001 What sections of the general provisions apply to me?
63.3002 Who implements and enforces this subpart?
63.3003 Incorporation by reference.
63.3004 What definitions apply to this subpart?
63.3005—63.3079 [Reserved].

Tables to Subpart HHHH of Part 63

Table 1 to Subpart HHHH—Minimum Requirements for Monitoring and Recordkeeping
Table 2 to Subpart HHHH—Applicability of General Provisions (40 CFR part 63, subpart A) to Subpart HHHH

Appendices to Subpart HHHH of Part 63

Appendix A to Subpart HHHH—Method for Determining Free-Formaldehyde in Urea-Formaldehyde Resins by Sodium Sulfite (Iced & Cooled)
Appendix B to Subpart HHHH—Method for the Determination of Loss-on-Ignition

Subpart HHHH—National Emissions Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production

What This Subpart Covers

§ 63.2980 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for emissions from facilities that produce wet-formed fiberglass mat. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

§ 63.2981 Does this subpart apply to me?

You must comply with this subpart if you meet the criteria in paragraphs (a) and (b) of this section:

(a) You own or operate a drying and curing oven at a wet-formed fiberglass mat production facility.

(b) Your drying and curing oven or the facility at which your drying and curing oven is located is a major source of hazardous air pollutants (HAP). A major source is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or can potentially emit, considering controls, in the aggregate, 9.07 megagrams (10 tons) or more per year of a single HAP or 22.68 megagrams (25 tons) or more per year of any combination of HAP.

§ 63.2982 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, or existing affected source. The affected source (the portion of your plant covered by this subpart) is each wet-formed fiberglass mat drying and curing oven.

(b) An affected source is a new affected source if you commenced construction of the affected source after May 26, 2000, and you meet the applicability criteria in § 63.2981 at start-up.

(c) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(d) An affected source is existing if it is not new or reconstructed.

Emission Limitations

§ 63.2983 What emission limits must I meet?

(a) You must limit the formaldehyde emissions from each drying and curing oven by either:

(1) Limiting emissions of formaldehyde to 0.03 kilograms or less per megagram (0.05 pounds per ton) of fiberglass mat produced; or

(2) Reducing uncontrolled formaldehyde emissions by 96 percent or more.

(b) [Reserved]

§ 63.2984 What operating limits must I meet?

(a) You must maintain operating parameters within established limits or ranges specified in your operation, maintenance, and monitoring (OMM) plan described in § 63.2987. If there is a deviation of any of the specified parameters from the limit or range specified in the OMM plan, you must address the deviation according to paragraph (b) of this section. You must comply with the operating limits specified in paragraphs (a)(1) through (4) of this section:

(1) You must operate the thermal oxidizer so that the average operating temperature in any 3-hour block period does not fall below the temperature established during your performance test and specified in your OMM plan.

(2) You must not use a resin with a free-formaldehyde content greater than that of the resin used during your performance test and specified in your OMM plan.

(3) You must operate the wet-formed fiberglass mat production process so that the average urea formaldehyde resin solids application rate in any 3-hour block period does not exceed the average application rate achieved during your performance test and specified in your OMM plan.

(4) If you use an add-on control device other than a thermal oxidizer or wish to monitor an alternative parameter and comply with a different operating limit, you must obtain approval for the alternative monitoring under § 63.8(f). You must include the approved alternative monitoring and operating limits in the OMM plan specified in § 63.2987.

(b) When during a period of normal operations you detect that an operating parameter deviates from the limit or range established in paragraph (a) of this section, you must initiate corrective actions within 1 hour according to the provisions of your OMM plan. During periods of start up, shut down, or malfunction you must follow your start up, shut down and malfunction plan (SSMP). The corrective action actions must be completed in an expeditious manner as specified in the OMM plan or SSMP.

(c) You must maintain and inspect control devices according to the procedures specified in the OMM plan.

(d) You must include the operating limits specified in paragraphs (a)(1) through (4) of this section and their allowable ranges or levels in your OMM plan. Your 40 CFR part 70 operating permit for the drying and curing oven must contain a requirement that you develop and operate according to an OMM plan at all times.

(e) If you use a thermal oxidizer or other control device to achieve the emission limits in § 63.2983, you must capture and convey the formaldehyde emissions from each drying and curing oven according to the procedures in chapters 3 and 5 of ''Industrial Ventilation: A Manual of Recommended Practice'' (23rd Edition). This publication is incorporated by reference in § 63.3003.

§ 63.2985 When do I have to comply with these standards?

(a) Existing drying and curing ovens must be in compliance with this subpart no later than April 11, 2005.

(b) New or reconstructed drying and curing ovens must be in compliance with this subpart at startup or by April 11, 2002, whichever is later.

(c) If your facility is an area source that increases its emissions or its potential to emit such that it becomes a major source of hazardous air pollutants, the following apply:

(1) Any portion of the existing facility that is a new affected source or a new reconstructed affected source must be in compliance upon startup.

(2) All other parts of the source must be in compliance with this subpart 1 year after becoming a major source or by April 11, 2005, whichever is later.

§ 63.2986 How do I comply with the standards?

(a) You must install, maintain, and operate a thermal oxidizer or other control device or implement a process modification that reduces formaldehyde emissions from each drying and curing oven to the emission limits specified in § 63.2983.

(b) You must comply with the operating limits specified in § 63.2984. The operating limits prescribe the requirements for demonstrating continuous compliance based on the OMM plan. You must begin complying with the operating limits on the date by which you must complete the initial performance test.

(c) You must conduct a performance test according to §§ 63.2991, 63.2992, and 63.2993 to demonstrate compliance for each drying and curing oven subject to the emission limits in § 63.2983, and to establish or modify the operating limits or ranges for process or control device parameters that will be monitored to demonstrate continuous compliance.

(d) You must install, calibrate, maintain, and operate devices that monitor the parameters specified in your OMM plan at the frequency specified in the plan. All continuous parameter monitoring systems must be installed and operating no later than the applicable compliance date specified in § 63.2985.

(e) You must prepare and follow a written OMM plan as specified in § 63.2987.

(f) You must comply with the monitoring, recordkeeping, notification, and reporting requirements of this subpart as required by §§ 63.2996 through 63.3000.

(g) You must comply with the requirements in paragraphs (g)(1) through (3) of this section.

(1) You must be in compliance with the emission limits in § 63.2983 and the operating limits in § 63.2984 at all times, except during periods of startup, shutdown, or malfunction.

(2) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1).

(3) You must develop and implement a written SSMP according to the provisions in § 63.6(e)(3). The SSMP must address the startup, shutdown, and corrective actions taken for malfunctioning process and air pollution control equipment.

Operation, Maintenance, and Monitoring Plan

§ 63.2987 What must my operation, maintenance, and monitoring (OMM) plan include?

(a) You must prescribe the monitoring that will be performed to ensure compliance with these emission limitations. Minimum monitoring requirements are listed in table 1 of this subpart. Your plan must specify the items listed in paragraphs (a)(1) through (3) of this section:

(1) Each process and control device to be monitored, the type of monitoring device that will be used, and the operating parameters that will be monitored.

(2) A monitoring schedule that specifies the frequency that the parameter values will be determined and recorded.

(3) The operating limits or ranges for each parameter that represent continuous compliance with the emission limits in § 63.2983. Operating limits and ranges must be based on values of the monitored parameters recorded during performance tests.

(b) You must establish routine and long-term maintenance and inspection

schedules for each control device. You must incorporate in the schedules the control device manufacturer's recommendations for maintenance and inspections or equivalent procedures. If you use a thermal oxidizer, the maintenance schedule must include procedures for annual or more frequent inspection of the thermal oxidizer to ensure that the structural and design integrity of the combustion chamber is maintained. At a minimum, you must meet the requirements of paragraphs (b)(1) through (10) of this section:

(1) Inspect all burners, pilot assemblies, and pilot sensing devices for proper operation. Clean pilot sensor if necessary.

(2) Ensure proper adjustment of combustion air and adjust if necessary.

(3) Inspect, when possible, all internal structures (such as baffles) to ensure structural integrity per the design specifications.

(4) Inspect dampers, fans, and blowers for proper operation.

(5) Inspect motors for proper operation.

(6) Inspect, when possible, combustion chamber refractory lining. Clean and repair or replace lining if necessary.

(7) Inspect the thermal oxidizer shell for proper sealing, corrosion, and hot spots.

(8) For the burn cycle that follows the inspection, document that the thermal oxidizer is operating properly and make any necessary adjustments.

(9) Generally observe whether the equipment is maintained in good operating condition.

(10) Complete all necessary repairs as soon as practicable.

(c) You must establish procedures for responding to operating parameter deviations. At a minimum, the procedures must include the information in paragraphs (c)(1) through (3) of this section.

(1) Procedures for determining the cause of the operating parameter deviation.

(2) Actions for correcting the deviation and returning the operating parameters to the allowable ranges or limits.

(3) Procedures for recording the date and time that the deviation began and ended, and the times corrective actions were initiated and completed.

(d) Your plan must specify the recordkeeping procedures to document compliance with the emissions and operating limits. Table 1 of this subpart establishes the minimum recordkeeping requirements.

§ 63.2988 [Reserved]

§ 63.2989 How do I change my OMM plan?

Changes to the operating limits or ranges in your OMM plan require a new performance test.

(a) In order to revise the ranges or levels established for your operating limits in § 63.2984, you must meet the requirements in paragraphs (a)(1) and (2) of this section:

(1) Submit a notification of performance test to the Administrator as specified in § 63.7(b) to revise your operating ranges or limits.

(2) After completing the performance test to demonstrate that compliance with the emissions limits can be achieved at the revised levels of the operating limits, you must submit the performance test results and the revised operating limits as part of the notification of compliance status required under § 63.9(h).

(b) If you are revising the inspection and maintenance procedures in your plan that are specified in § 63.2987(b), you do not need to conduct a new performance test.

(c) If you plan to operate your process or control device under alternative operating conditions and do not wish to revise your OMM plan when you change operating conditions, you can perform a separate compliance test to establish operating limits for each condition. You can then include the operating limits for each condition in your OMM plan. After completing the performance tests, you must record the date and time when you change operations from one condition to another, the condition under which you are operating, and the operating limits that apply under that condition. If you can perform a single performance test that establishes the most stringent operating limits that cover all alternative operating conditions, then you do not need to comply with the provisions of this paragraph.

§ 63.2990 Can I conduct short-term experimental production runs that cause parameters to deviate from operating limits?

With the approval of the Administrator, you may conduct short-term experimental production runs during which your operating parameters deviate from the operating limits. Experimental runs may include, but are not limited to, runs using resin with a higher free-formaldehyde content than specified in the OMM plan, or using experimental pollution prevention techniques. To conduct a short-term experimental production run, you must complete the requirements in paragraphs (a) and (b) of this section.

(a) Prepare an application to the Administrator for approval to conduct the experimental production runs. Your application must include the items listed in paragraphs (a)(1) through (6) of this section.

(1) The purpose of the experimental production run.

(2) Identification of the affected line.

(3) An explanation of how the operating parameters will deviate from the previously approved ranges and limits.

(4) The duration of the experimental production run.

(5) The date and time of the experimental production run.

(6) A description of any emission testing to be performed during the experimental production run.

(b) Submit the application to the Administrator for approval at least 30 days before you conduct the experimental production run.

(c) If you conduct such experimental production runs without first receiving approval from the Administrator, then you must conduct a performance test under those same experimental production run conditions to show that you were in compliance with the formaldehyde emission limits in § 63.2983.

Testing and Initial Compliance Requirements

§ 63.2991 When must I conduct performance tests?

You must conduct a performance test for each drying and curing oven subject to this subpart according to the provisions in paragraphs (a) through (c) of this section:

(a) *Initially.* You must conduct an initial performance test no later than 180 days after the applicable compliance date specified in § 63.2985. The initial performance test is used to demonstrate initial compliance and establish operating parameter limits and ranges to be used to demonstrate continuous compliance with the emission standards.

(b) *Every 5 years.* You must conduct a performance test every 5 years as part of renewing your 40 CFR part 70 operating permit.

(c) *To change your OMM plan.* You must conduct a performance test according to the requirements specified in § 63.2992 to change the limit or range for any operating limit specified in your OMM plan established during a previous compliance test.

§ 63.2992 How do I conduct a performance test?

(a) You must verify the performance of monitoring equipment as specified in § 63.2994 before performing the test.

(b) You must conduct the performance test according to the procedures in § 63.7.

(c) You must conduct the performance test under the conditions specified in paragraphs (c)(1) and (2) of this section.

(1) The resin must have the highest specified free-formaldehyde content that will be used.

(2) You must operate at the maximum feasible urea-formaldehyde resin solids application rate (pounds urea-formaldehyde resin solids applied per hour) that will be used.

(d) During the performance test, you must monitor and record the operating parameters that you will use to demonstrate continuous compliance after the test. These parameters are listed in table 1 of this subpart.

(e) You may not conduct performance tests during periods of startup, shutdown, or malfunction as specified in § 63.7(e)(1).

(f) You must conduct three separate test runs for each performance test as specified in § 63.7(e)(3), and each test run must last at least 1 hour.

§ 63.2993 What test methods must I use in conducting performance tests?

(a) Use EPA Method 1 (40 CFR part 60, appendix A) for selecting the sampling port location and the number of sampling ports.

(b) Use EPA Method 2 (40 CFR part 60, appendix A) for measuring the volumetric flow rate.

(c) Use EPA Method 316 or 318 (40 CFR part 63, appendix A) for measuring the concentration of formaldehyde.

(d) Use the method contained in appendix A of this subpart or the resin purchase specification and the vendor specification sheet for each resin lot for determining the free-formaldehyde content in the urea-formaldehyde resin.

(e) Use the method in appendix B of this subpart for determining product loss-on-ignition.

§ 63.2994 How do I verify the performance of monitoring equipment?

(a) Before conducting the performance test, you must take the steps listed in paragraphs (a)(1) and (2) of this section:

(1) Install and calibrate all process equipment, control devices, and monitoring equipment.

(2) Conduct a performance evaluation of the continuous monitoring system (CMS) according to § 63.8(e) which specifies the general requirements and requirements for notifications, the site-specific performance evaluation plan, conduct of the performance evaluation, and reporting of performance evaluation results.

(b) If you use a thermal oxidizer, the temperature monitoring device must meet the performance and equipment specifications listed in paragraphs (b)(1) through (3) of this section:

(1) The temperature monitoring device must be installed either at the exit of the combustion zone of each thermal oxidizer, or at the location specified by the manufacturer. The temperature monitoring device must also be installed in a location before any heat recovery or heat exchange equipment, and it must remain in the same location for both the performance test and the continuous monitoring of temperature.

(2) The recorder response range must include zero and 1.5 times the average temperature required in § 63.2984(a)(1).

(3) The measurement method or reference method for calibration must be a National Institute of Standards and Technology calibrated reference thermocouple-potentiometer system or an alternate reference subject to the approval of the Administrator.

§ 63.2995 What equations must I use to determine compliance?

(a) *Percent reduction for formaldehyde.* To determine compliance with the percent reduction formaldehyde emission standard, use equation 1 of this section as follows:

$$E_f = \frac{M_i - M_o}{M_i} \times 100 \qquad \text{(Eq. 1)}$$

Where:

E_f = Formaldehyde control efficiency, percent.

M_i = Mass flow rate of formaldehyde entering the control device, kilograms (pounds) per hour.

M_o = Mass flow rate of formaldehyde exiting the control device, kilograms (pounds) per hour.

(b) *Formaldehyde mass emissions rate.* To determine compliance with the kilogram per megagram (pound per ton) formaldehyde emission standard, use equation 2 of this section as follows:

$$E = \frac{M}{P} \qquad \text{(Eq. 2)}$$

Where:

E = Formaldehyde mass emissions rate, kilograms (pounds) of formaldehyde per megagram (ton) of fiberglass mat produced.

M = Formaldehyde mass emissions rate, kilograms (pounds) per hour.

P = The wet-formed fiberglass mat production rate during the emissions sampling period, including any material trimmed from the final product, megagrams (tons) per hour.

(c) *Urea-formaldehyde (UF) resin solids application rate.* To determine the UF resin solids application rate, use equation 3 of this section as follows:

$$\frac{\text{UF Solids}}{\text{Hour}} = \text{LOI} \times \text{UFL} \times \text{MW} \times \text{SQ} \qquad \text{(Eq. 3)}$$

Where:

UF solids/hour = UF resin solids application rate (pounds per hour).

LOI = loss on ignition (weight faction), or pound of organic binder per pound of mat.

UFL = UF-to-latex ratio in the binder (mass fraction of UF resin solids in total combined resin solids for UF and latex), or pound of UF solids per pound of total resin solids (UF and latex).

MW = weight of the final mat per square (pounds per roofing square).

SQ = roofing squares produced per hour.

Monitoring Requirements

§ 63.2996 What must I monitor?

You must monitor the parameters listed in table 1 of this subpart and any other parameters specified in your OMM plan. The parameters must be monitored, at a minimum, at the corresponding frequencies listed in table 1 of this subpart.

§ 63.2997 What are the requirements for monitoring devices?

(a) If formaldehyde emissions are controlled using a thermal oxidizer, you must meet the requirements in paragraphs (a)(1) and (2) of this section:

(1) Install, calibrate, maintain, and operate a device to monitor and record continuously the thermal oxidizer temperature at the exit of the combustion zone before any substantial

heat exchange occurs or at the location consistent with the manufacturer's recommendations.

(2) Continuously monitor the thermal oxidizer temperature and determine and record the average temperature in 15-minute and 3-hour block averages. You may determine the average temperature more frequently than every 15 minutes and every 3 hours, but not less frequently.

(b) If formaldehyde emissions are controlled by process modifications or a control device other than a thermal oxidizer, you must install, calibrate, maintain, and operate devices to monitor the parameters established in your OMM plan at the frequency established in the plan.

Notifications, Reports, and Records

§ 63.2998 What records must I maintain?

You must maintain records according to the procedures of § 63.10. You must maintain the records listed in paragraphs (a) through (g) of this section.

(a) All records required by § 63.10. Table 2 of this subpart presents the applicable requirements of the general provisions.

(b) The OMM plan.

(c) Records of values of monitored parameters listed in table 1 of this subpart to show continuous compliance with each operating limit specified in table 1 of this subpart.

(d) Records of maintenance and inspections performed on the control devices.

(e) If an operating parameter deviation occurs, you must record:

(1) The date, time, and duration of the operating parameter deviation;

(2) A brief description of the cause of the operating parameter deviation;

(3) The dates and times at which corrective actions were initiated and completed;

(4) A brief description of the corrective actions taken to return the parameter to the limit or to within the range specified in the OMM plan; and

(5) A record of whether the deviation occurred during a period of startup, shutdown, or malfunction.

(f) Keep all records specified in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(g) If you operate your process or control device under alternative operating condition and have established operating limits for each condition as specified in § 63.2989(c), then you must keep records of the date and time you changed operations from one condition to another, the condition under which you are operating, and the applicable operating limits for that condition.

§ 63.2999 In what form and for how long must I maintain records?

(a) You must maintain each record required by this subpart for 5 years. You must maintain the most recent 2 years of records at the facility. The remaining 3 years of records may be retained offsite.

(b) Your records must be readily available and in a form so they can be easily inspected and reviewed. You can keep the records on paper or an alternative media, such as microfilm, computer, computer disks, magnetic tape, or on microfiche.

§ 63.3000 What notifications and reports must I submit?

(a) You must submit all notifications and reports required by the applicable general provisions and this section. Table 2 of this subpart presents the applicable requirements of the general provisions.

(b) *Notification of compliance status.* You must submit the notification of compliance status, including the performance test results, the operating limits or ranges as determined during the performance test, and other information specified in § 63.9(h), before the close of business on the 60th calendar day after you complete the performance test according to § 63.10(d)(2).

(c) *Semiannual compliance reports.* You must submit semiannual compliance reports according to the requirements of paragraphs (c)(1) through (5) of this section.

(1) *Dates for submitting reports.* Unless the Administrator has agreed to a different schedule for submitting reports under § 63.10(a), you must deliver or postmark each semiannual compliance report no later than 30 days following the end of each semiannual reporting period. The first semiannual reporting period begins on the compliance date for your affected source and ends on June 30 or December 31, whichever date immediately follows your compliance date. Each subsequent semiannual reporting period for which you must submit a semiannual compliance report begins on July 1 or January 1 and ends 6 calendar months later. As required by § 63.10(e)(3), you must begin submitting quarterly compliance reports if you deviate from the emission limits in § 63.2983 or the operating limits in § 63.2984.

(2) *Inclusion with title V report.* For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 71, and for which the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 71.6 (a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraph (c)(1) of this section.

(3) *Contents of reports.* The semiannual compliance report must contain the information in paragraphs (c)(3)(i) through (vi) of this section:

(i) Company name and address.

(ii) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(iii) Date of report and beginning and ending dates of the reporting period.

(iv) A summary of the total duration of continuous parameter monitoring system downtime during the semiannual reporting period and the total duration of continuous parameter monitoring system downtime as a percent of the total source operating time during that semiannual reporting period.

(v) The date of the latest continuous parameter monitoring system certification or audit.

(vi) A description of any changes in the wet-formed fiberglass mat manufacturing process, continuous parameter monitoring system, or add-on control device since the last semiannual reporting period.

(4) *No deviations.* If there were no deviations from the emission limit in § 63.2983 or the operating limits in § 63.2984, the semiannual compliance report must include a statement to that effect. If there were no periods during which the continuous parameter monitoring systems were out-of-control as specified in § 63.8(c)(7), the semiannual compliance report must include a statement to that effect.

(5) *Deviations.* If there was a deviation from the emission limit in § 63.2983 or an operating limit in § 63.2984, the semiannual compliance report must contain the information in paragraphs (c)(5)(i) through (ix) of this section:

(i) The date and time that each malfunction started and stopped.

(ii) The date and time that each continuous parameter monitoring system was inoperative, except for zero (low-level) and high-level checks.

(iii) The date, time, and duration that each continuous parameter monitoring system was out-of-control, including the information in § 63.8(c)(8).

(iv) The date and time that each deviation started and stopped, and whether each deviation occurred during

a period of startup, shutdown, or malfunction or during another period.

(v) The date and time that corrective actions were taken, a description of the cause of the deviation, and a description of the corrective actions taken.

(vi) A summary of the total duration of each deviation during the semiannual reporting period and the total duration as a percent of the total source operating time during that semiannual reporting period.

(vii) A breakdown of the total duration of the deviations during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(viii) A brief description of the process units.

(ix) A brief description of the continuous parameter monitoring system.

(d) *Performance test reports.* You must submit reports of performance test results for add-on control devices no later than 60 days after completing the tests as specified in § 63.10(d)(2). You must include in the performance test reports the values measured during the performance test for the parameters listed in table 1 of this subpart and the operating limits or ranges to be included in your OMM plan. For the thermal oxidizer temperature, you must include 15-minute averages and the average for the three 1-hour test runs.

(e) *Startup, shutdown, malfunction reports.* If you have a startup, shutdown, or malfunction during the semiannual reporting period, you must submit the reports specified § 63.10(d)(5).

Other Requirements and Information

§ 63.3001 What sections of the general provisions apply to me?

You must comply with the requirements of the general provisions of 40 CFR part 63, subpart A, as specified in table 2 of this subpart.

§ 63.3002 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority, such as your State, local, or tribal agency. If the Administrator has delegated authority to your State, local, or tribal agency, then that agency is the primary enforcement authority. If the Administrator has not delegated authority to your State, only EPA enforces this subpart. You should contact your U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under section 40 CFR part 63, subpart E, the authorities contained in paragraphs (b)(1) through (4) of this section are retained by the Administrator of U.S. EPA and are not transferred to the State, local, or tribal agency.

(1) The authority under § 63.6(g) to approve alternatives to the emission limits in § 63.2983 and operating limits in § 63.2984 is not delegated.

(2) The authority under § 63.7(e)(2)(ii) and (f) to approve of major alternatives (as defined in § 63.90) to the test methods in § 63.2993 is not delegated.

(3) The authority under § 63.8(f) to approve major alternatives (as defined in § 63.90) to the monitoring requirements in §§ 63.2996 and 63.2997 is not delegated.

(4) The authority under § 63.10(f) to approve major alternatives (as defined in § 63.90) to recordkeeping, notification, and reporting requirements in §§ 63.2998 through 63.3000 is not delegated.

§ 63.3003 Incorporation by reference.

(a) The following material is incorporated by reference and referred to at § 63.2984: chapters 3 and 5 of ''Industrial Ventilation: A Manual of Recommended Practice,'' American Conference of Governmental Industrial Hygienists, (23rd edition, 1998). The incorporation by reference of this material is approved by the Director of the Office of the Federal Register as of the date of publication of the final rule according to 5 U.S.C. 552(a) and 1 CFR part 51. This material is incorporated as it exists on the date of approval and notice of any change in the material will be published in the **Federal Register**.

(b) The materials referenced in this section are incorporated by reference and are available for inspection at the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, 7th Floor, Washington, DC; and at the Air and Radiation Docket and Information Center, U.S. EPA, 401 M Street SW, Washington, DC. The material is also available for purchase from the following address: Customer Service Department, American Conference of Governmental Industrial Hygienists (ACGIH), 1330 Kemper Meadow Drive, Cincinnati, OH 45240, telephone number (513) 742–2020.

§ 63.3004 What definitions apply to this subpart?

Terms used in this subpart are defined the Clean Air Act, in § 63.2, and in this section as follows:

Administrator means the Administrator of the United States Environmental Protection Agency or his or her authorized representative (e.g., a State that has been delegated the authority to implement the provisions of this part).

Binder application vacuum exhaust means the exhaust from the vacuum system used to remove excess resin solution from the wet-formed fiberglass mat before it enters the drying and curing oven.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limit, or operating limit, or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limit, or operating limit, or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Drying and curing oven means the process section that evaporates excess moisture from a fiberglass mat and cures the resin that binds the fibers.

Emission limitation means an emission limit, operating limit, or work practice standard.

Fiberglass mat production rate means the weight of finished fiberglass mat produced per hour of production including any trim removed after the binder is applied and before final packaging.

Loss-on-ignition means the percentage decrease in weight of fiberglass mat measured before and after it has been ignited to burn off the applied binder. The loss-on-ignition is used to monitor the weight percent of binder in fiberglass mat.

Nonwoven wet-formed fiberglass mat manufacturing means the production of a fiberglass mat by bonding glass fibers to each other using a resin solution. Nonwoven wet-formed fiberglass mat manufacturing is also referred to as wet-formed fiberglass mat manufacturing.

Roofing square means the amount of finished product needed to cover an area 10 feet by 10 feet (100 square feet) of finished roof.

Thermal oxidizer means an air pollution control device that uses controlled flame combustion inside a combustion chamber to convert

combustible materials to noncombustible gases.

Urea-formaldehyde content in binder formulation means the mass-based percent of urea-formaldehyde resin in the total binder mix as it is applied to the glass fibers to form the mat.

§§ 63.3005–63.3079 [Reserved].

Tables to Subpart HHHH of Part 63

TABLE 1 TO SUBPART HHHH.—MINIMUM REQUIREMENTS FOR MONITORING AND RECORDKEEPING

[As stated in § 63.2998(c), you must comply with the minimum requirements for monitoring and recordkeeping in the following table]

You must monitor these parameters:	At this frequency:	And record for the monitored perameter:
1. Thermal oxidizer temperature [a]	Continuously	15-minute and 3-hour block averages.
2. Other process or control device parameters specified in your OMM [b] plan.	As specified in your OMM plan	As specified in your OMM plan.
3. Urea-formaldehyde resin solids application rate.	On each operating day, calculate the average lb/hr application rate for each product manufactured during that day.	The average lb/hr value for each product manufactured during the day.
4. Resin free-formaldehyde content	For each lot of resin purchased	The value for each lot used during the operating day.
5. Loss-on-ignition [c]	Measured at least once per day, for each product manufactured during that day.	The value for each product manufactured during the operating day.
6. UF-to-latex ratio in the binder [c]	For each batch of binder prepared the operating day.	The value for each batch of binder prepared during the operating day.
7. Weight of the final mat product per square (lb/roofing square)[c].	Each product manufactured during the operating day.	The value for each product manufactured during the operating day.
8. Average nonwoven wet-formed fiberglass mat production rate (roofing squares per the hour) [c].	For each product manufactured during the operating day.	The average value for each product manufactured during operating day.

[a] Required if a thermal oxidizer is used to control formaldehyde emissions.
[b] Required if process modifications or a control device other than a thermal oxidizer is used to control emissions.
[c] These parameters must be monitored and values recorded, but no operating limits apply.

TABLE 2 TO SUBPART HHHH.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART HHHH

[As stated in § 63.3001, you must comply with the applicable General Provisions requirements according to the following table]

Citation	Requirement	Applies to subpart HHHH	Explanation
§ 63.1(a)(1)–(4)	General Applicability	Yes	
§ 63.1(a)(5)		No	[Reserved].
§ 63.1(a)(6)–(8)		Yes	
§ 63.1(a)(9)		No	[Reserved].
§ 63.1(a)(10)–(14)		Yes	
§ 63.1(b)	Initial Applicability Determination	Yes	
§ 63.1(c)(1)	Applicability After Standard Established	Yes	
§ 63.1(c)(2)		Yes	Some plants may be area sources.
§ 63.1(c)(3)		No	[Reserved].
§ 63.1(c)(4)–(5)		Yes	
§ 63.1(d)		No	[Reserved].
§ 63.1(e)	Applicability of Permit Program	Yes	
§ 63.2	Definitions	Yes	Additional definitions in § 63.3004.
§ 63.3	Units and Abbreviations	Yes	
§ 63.4(a)(1)–(3)	Prohibited Activities	Yes	
§ 63.4(a)(4)		No	[Reserved].
§ 63.4(a)(5)		Yes	
§ 63.4(b)–(c)	Circumvention/Severability	Yes	
§ 63.5(a)	Construction/Reconstruction	Yes	
§ 63.5(b)(1)	Existing/Constructed/Reconstruction	Yes	
§ 63.5(b)(2)		No	[Reserved].
§ 63.5(b)(3)–(6)		Yes	
§ 63.5(c)		No	[Reserved].
§ 63.5(d)	Application for Approval of Construction/Reconstruction.	Yes	
§ 63.5(e)	Approval of Construction/Reconstruction	Yes	
§ 63.5(f)	Approval of Construction/Reconstruction Based on State Review.	Yes	
§ 63.6(a)	Compliance with Standards and Maintenance—Applicability.	Yes	
§ 63.6(b)(1)–(5)	New and Reconstructed Sources-Dates	Yes	
§ 63.6(b)(6)		No	[Reserved].
§ 63.6(b)(7)		Yes	
§ 63.6(c)(1)–(2)	Existing Sources Dates	Yes	§ 63.2985 specifies dates.
§ 63.6(c)(3)–(4)		No	[Reserved].
§ 63.6(c)(5)		Yes	

TABLE 2 TO SUBPART HHHH.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART HHHH—Continued

[As stated in § 63.3001, you must comply with the applicable General Provisions requirements according to the following table]

Citation	Requirement	Applies to subpart HHHH	Explanation
§ 63.6(d)		No	[Reserved].
§ 63.6(e)	Operation and Maintenance Requirements.	Yes	§§ 63.2984 and 63.2987 specify additional requirements.
§ 63.6(f)	Compliance with Emission Standards	Yes	
§ 63.6(g)	Alternative Standard	Yes	EPA retains approval authority.
§ 63.6(h)	Compliance with Opacity/Visible Emissions Standards.	No	Subpart HHHH does not specify opacity or visible emission standards.
§ 63.6(i)(1)–(14)	Extension of Compliance	Yes	
§ 63.6(i)(15)		No	[Reserved].
§ 63.6(i)(16)		Yes	
§ 63.6(j)	Exemption from Compliance	Yes	
§ 63.7(a)	Performance Test Requirements—Applicability and Dates.	Yes	
§ 63.7(b)	Notification of Performance Test	Yes	
§ 63.7(c)	Quality Assurance Program/Test Plan	Yes	
§ 63.7(d)	Testing Facilities	Yes	
§ 63.7(e)	Conduct of Tests	Yes	§ 63.2991–63.2994 specify additional requirements.
§ 63.7(f)	Alternative Test Method	Yes	EPA retains approval authority
§ 63.7(g)	Data Analysis	Yes	
§ 63.7(h)	Waiver of Tests	Yes	
§ 63.8(a)(1)–(2)	Monitoring Requirements—Applicability	Yes	
§ 63.8(a)(3)		No	[Reserved].
§ 63.8(a)(4)		Yes	
§ 63.8(b)	Conduct of Monitoring	Yes	
§ 63.8(c)(1)–(3)	Continuous Monitoring System (CMS) Operation and Maintenance.	Yes	
§ 63.8(c)(4)		Yes	
§ 63.8(c)(5)		No	Subpart HHHH does not specify opacity or visible emission standards
§ 63.8(c)(6)–(8)		Yes	
§ 63.8(d)	Quality Control	Yes	
§ 63.8(e)	CMS Performance Evaluation	Yes	
§ 63.8(f)(1)–(5)	Alternative Monitoring Method	Yes	EPA retains approval authority
§ 63.8(f)(6)	Alternative to Relative Accuracy Test	No	Subpart HHHH does not require the use of continuous emissions monitoring systems (CEMS)
§ 63.8(g)(1)	Data Reduction	Yes	
§ 63.8(g)(2)	Data Reduction	No	Subpart HHHH does not require the use of CEMS or continuous opacity monitoring systems (COMS).
§ 63.8(g)(3)–(5)	Data Reduction	Yes	
§ 63.9(a)	Notification Requirements—Applicability	Yes	
§ 63.9(b)	Initial Notifications	Yes	
§ 63.9(c)	Request for Compliance Extension	Yes	
§ 63.9(d)	New Source Notification for Special Compliance Requirements.	Yes	
§ 63.9(e)	Notification of Performance Test.	Yes	
§ 63.9(f)	Notification of Visible Emissions/Opacity Test.	No	Subpart HHHH does not specify opacity or visible emission standards.
§ 63.9(g)(1)	Additional CMS Notifications	Yes	
§ 63.9(g)(2)–(3)		No	Subpart HHHH does not require the use of COMS or CEMS.
§ 63.9(h)(1)–(3)	Notification of Compliance Status	Yes	§ 63.3000(b) specifies additional requirements.
§ 63.9(h)(4)		No	[Reserved].
§ 63.9(h)(5)–(6)		Yes	
§ 63.9(i)	Adjustment of Deadlines	Yes	
§ 63.9(j)	Change in Previous Information	Yes	
§ 63.10(a)	Recordkeeping/Reporting—Applicability	Yes	
§ 63.10(b)	General Recordkeeping Requirements	Yes	§ 63.2998 includes additional requirements.
§ 63.10(c)(1)	Additional CMS Recordkeeping	Yes	
§ 63.10(c)(2)–(4)		No	[Reserved].
§ 63.10(c)(5)–(8)		Yes	
§ 63.10(c)(9)		No	[Reserved].
§ 63.10(c)(10)–(15)		Yes	
§ 63.10(d)(1)	General Reporting Requirements	Yes	§ 63.3000 includes additional requirements.

TABLE 2 TO SUBPART HHHH.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART HHHH—Continued

[As stated in § 63.3001, you must comply with the applicable General Provisions requirements according to the following table]

Citation	Requirement	Applies to subpart HHHH	Explanation
§ 63.10(d)(2)	Performance Test Results	Yes	§ 63.3000 includes additional requirements
§ 63.10(d)(3)	Opacity or Visible Emissions Observations.	No	Subpart HHHH does not specify opacity or visible emission standards.
§ 63.10(d)(4)–(5)	Progress Reports/Startup, Shutdown, and Malfunction Reports.	Yes	
§ 63.10(e)(1)	Additional CMS Reports—General	No	Subpart HHHH does not require CEMS.
§ 63.10(e)(2)	Reporting results of CMS performance evaluations.	Yes	
§ 63.10(e)(3)	Excess Emission/CMS Performance Reports.	Yes	
§ 63.10(e)(4)	COMS Data Reports	No	Subpart HHHH does not specify opacity or visible emission standards.
§ 63.10(f)	Recordkeeping/Reporting Waiver	Yes	EPA retains approval authority
§ 63.11	Control Device Requirments—Applicability.	No	Facilities subject to subpart HHHH do not use flares as control devices.
§ 63.12	State Authority and Delegations	Yes	
§ 63.13	Addresses	Yes	
§ 63.14	Incorporation by Reference	No	
§ 63.15	Availability of Information/Confidentiality	Yes	

Appendices to Subpart HHHH of Part 63

Appendix A to Subpart HHHH—Method for Determining Free-Formaldehyde in Urea-Formaldehyde Resins by Sodium Sulfite (Iced & Cooled)

1.0 Scope

This procedure corresponds to the Housing and Urban Development method of determining free-formaldehyde in urea-formaldehyde resins. This method applies to samples that decompose to yield formaldehyde under the conditions of other free-formaldehyde methods. The primary use is for urea-formaldehyde resins.

2.0 Part A—Testing Resins

Formaldehyde will react with sodium sulfite to form the sulfite addition products and liberate sodium hydroxide (NaOH); however, at room temperature, the methanol groups present will also react to liberate NaOH. Titrate at 0 degrees Celsius (°C) to minimize the reaction of the methanol groups.

2.1 Apparatus Required.

2.1.1 Ice crusher.

2.1.2 One 100-milliliter (mL) graduated cylinder.

2.1.3 Three 400-mL beakers.

2.1.4 One 50-mL burette.

2.1.5 Analytical balance accurate to 0.1 milligrams (mg).

2.1.6 Magnetic stirrer.

2.1.7 Magnetic stirring bars.

2.1.8 Disposable pipettes.

2.1.9 Several 5-ounce (oz.) plastic cups.

2.1.10 Ice cube trays (small cubes).

2.2 Materials Required.

2.2.1 Ice cubes (made with distilled water).

2.2.2 A solution of 1 molar (M) sodium sulfite (Na_2SO_3) (63 grams (g) Na_2SO_3/500 mL water (H_2O) neutralized to thymolphthalein endpoint).

2.2.3 Standardized 0.1 normal (N) hydrochloric acid (HCl).

2.2.4 Thymolphthalein indicator (1.0 g thymolphthalein/199 g methanol).

2.2.5 Sodium chloride (NaCl) (reagent grade).

2.2.6 Sodium hydroxide (NaOH).

2.3 Procedure.

2.3.1 Prepare sufficient quantity of crushed ice for three determinations (two trays of cubes).

2.3.2 Put 70 cubic centimeters (cc) of 1 M Na_2SO_3 solution into a 400-mL beaker. Begin stirring and add approximately 100 g of crushed ice and 2 g of NaCl. Maintain 0 °C during test, adding ice as necessary.

2.3.3 Add 10–15 drops of thymolphthalein indicator to the chilled solution. If the solution remains clear, add 0.1 N NaOH until the solution turns blue; then add 0.1 N HCl back to the colorless endpoint. If the solution turns blue upon adding the indicator, add 0.1 N HCl to the colorless endpoint.

2.3.4 On the analytical balance, accurately weigh the amount of resin indicated under the ''*Resin Sample Size*'' chart (see below) as follows.

RESIN SAMPLE SIZE

Approximate free HCHO (percent)	Sample weight (gram(s))
<0.5	10
0.5–1.0	5
1.0–3.0	2
3.0	1

2.3.4.1 Pour about 1 inch of resin into a 5 oz. plastic cup.

2.3.4.2 Determine the gross weight of the cup, resin, and disposable pipette (with the narrow tip broken off) fitted with a small rubber bulb.

2.3.4.3 Pipette out the desired amount of resin into the stirring, chilled solution (approximately 1.5 to 2 g per pipette-full).

2.3.4.4 Quickly reweigh the cup, resin, and pipette with the bulb.

2.3.4.5 The resultant weight loss equals the grams of resin being tested.

2.3.5 Rapidly titrate the solution with 0.1 N HCl to the colorless endpoint described in Step 3 (2.3.3).

2.3.6 Repeat the test in triplicate.

2.4 Calculation.

2.4.1 The percent free-formaldehyde (%HCHO) is calculated as follows:

$$\%\text{HCHO} = \frac{(\text{mL 0.1 N HCl})\ (\text{N of Acid})\ (3.003)}{\text{Weight of Sample}}$$

2.4.2 Compute the average percent free-formaldehyde of the three tests.

(**Note:** If the results of the three tests are not within a range of ±0.5 percent or if the average of the three tests does not meet expected limits, carry out Part B and then repeat Part A.)

3.0 Part B—Standard Check

Part B ensures that test reagents used in determining percent free-formaldehyde in urea-formaldehyde resins are of proper concentration and that operator technique is correct. Should any doubts arise in either of these areas, the formaldehyde standard solution test should be carried out.

3.1 Preparation and Standardization of a 1 Percent Formalin Solution.

Prepare a solution containing approximately 1 percent formaldehyde from a stock 37 percent formalin solution. Standardize the prepared solution by titrating the hydroxyl ions resulting from the formation of the formaldehyde bisulfite complex.

3.2 Apparatus Required.

Note: All reagents must be American Chemical Society analytical reagent grade or better.

3.2.1 One 1-liter (L) volumetric flask (class A).

3.2.2 One 250-mL volumetric flask (class A).

3.2.3 One 250-mL beaker.

3.2.4 One 100-mL pipette (class A).

3.2.5 One 10-mL pipette (class A).

3.2.6 One 50-mL graduated cylinder (class A).

3.2.7 A pH meter, standardized using pH 7 and pH 10 buffers.

3.2.8 Magnetic stirrer.

3.2.9 Magnetic stirring bars.

3.2.10 Several 5-oz. plastic cups.

3.2.11 Disposal pipettes.

3.2.12 Ice cube trays (small cubes).

3.3 Materials Required.

3.3.1 A solution of 37 percent formalin.

3.3.2 Anhydrous Na_2SO_3.

3.3.3 Distilled water.

3.3.4 Standardized 0.100 N HCl.

3.3.5 Thymolphthalein indicator (1.0 g thymolphthalein/199 g methanol).

3.4 Preparation of Solutions and Reagents.

3.4.1 Formaldehyde Standard Solution (approximately 1 percent). Measure, using a graduated cylinder, 27.0 mL of analytical reagent 37 percent formalin solution into a 1-L volumetric flask. Fill the flask to volume with distilled water.

(**Note:** You must standardize this solution as described in section 3.5. This solution is stable for 3 months.)

3.4.2 Sodium Sulfite Solution 1.0 M (used for standardization of Formaldehyde Standard Solution). Quantitatively transfer, using distilled water as the transfer solvent, 31.50 g of anhydrous Na_2SO_3 into a 250-mL volumetric flask. Dissolve in approximately 100 mL of distilled water and fill to volume.

(**Note:** You must prepare this solution daily, but the calibration of the Formaldehyde Standard Solution needs to be done only once.)

3.4.3 Hydrochloric Acid Standard Solution 0.100 M. This reagent should be readily available as a primary standard that only needs to be diluted.

3.5 Standardization.

3.5.1 Standardization of Formaldehyde Standard Solution.

3.5.1.1 Pipette 100.0 mL of 1 M sodium sulfite into a stirred 250-mL beaker.

3.5.1.2 Using a standardized pH meter, measure and record the pH. The pH should be around 10. It is not essential the pH be 10; however, it is essential that the value be accurately recorded.

3.5.1.3 To the stirring Na_2SO_3 solution, pipette in 10.0 mL of Formaldehyde Standard Solution. The pH should rise sharply to about 12.

3.5.1.4 Using the pH meter as a continuous monitor, titrate the solution back to the original exact pH using 0.100 N HCl. Record the milliliters of HCl used as titrant. (**Note:** Approximately 30 to 35 mL of HCl will be required.)

3.5.1.5 Calculate the concentration of the Formaldehyde Standard Solution using the equation as follows:

$$\%HCHO = \frac{(\text{mL HCl})\ (\text{N HCl})\ (3.003)}{\text{mL sample}}$$

3.6 Procedure.

3.6.1 Prepare a sufficient quantity of crushed ice for three determinations (two trays of cubes).

3.6.2 Put 70 cc of 1 M Na_2SO_3 solution into a 400-mL beaker. Begin stirring and add approximately 100 g of crushed ice and 2 g NaCl. Maintain 0 °C during the test, adding ice as necessary.

3.6.3 Add 10–15 drops of thymolphthalein indicator to the chilled solution. If the solution remains clear, add 0.1 N NaOH until the solution turns blue; then add 0.1 N HCl back to the colorless endpoint. If the solution turns blue upon adding the indicator, add 0.1 N HCl to the colorless endpoint.

3.6.4 On the analytical balance, accurately weigh a sample of Formaldehyde Standard Solution as follows.

3.6.4.1 Pour about 0.5 inches of Formaldehyde Standard Solution into a 5-oz. plastic cup.

3.6.4.2 Determine the gross weight of the cup, Formaldehyde Standard Solution, and a disposable pipette fitted with a small rubber bulb.

3.6.4.3 Pipette approximately 5 g of the Formaldehyde Standard Solution into the stirring, chilled Na_2SO_3 solution.

3.6.4.4 Quickly reweigh the cup, Formaldehyde Standard Solution, and pipette with the bulb.

3.6.4.5 The resultant weight loss equals the grams of Formaldehyde Standard Solution being tested.

3.6.5 Rapidly titrate the solution with 0.1 N HCl to the colorless endpoint in Step 3 (3.6.3).

3.6.6 Repeat the test in triplicate.

3.7 Calculation for Formaldehyde Standard Solution.

3.7.1 The percent free-formaldehyde (% HCHO) is calculated as follows:

$$\%HCHO = \frac{(\text{mL 0.1 N HCl})(\text{N Acid})(3.003)}{\text{Weight of Formaldehyde Standard Solution}}$$

3.7.2 The range of the results of three tests should be no more than ±5 percent of the actual Formaldehyde Standard Solution concentration. Report results to two decimal places.

3.8 Reference.

West Coast Adhesive Manufacturers Trade Association Test 10.1.

Appendix B to Subpart HHHH—Method for the Determination of Loss-on-Ignition

1.0 Purpose

The purpose of this test is to determine the loss-on-ignition (LOI) of wet-formed fiberglass mat.

2.0 Equipment

2.1 Scale sensitive to 0.001 gram (g).

2.2 Drying oven equipped with a means of constant temperature regulation and mechanical air convection.

2.3 Furnace designed to heat to at least 625 °C (1,157 °F) and controllable to ±25 °C (±45 °F).

2.4 Crucible, high form, 250 milliliter (mL).

2.5 Desiccator.

2.6 Pan balance (see Note 2 in 4.9)

3.0 Sample Collection Procedure

3.1 Obtain a sample of mat in accordance with Technical Association of the Pulp and Paper Industry (TAPPI) method 1007 ''Sample Location.''

3.2 Use a 5- to 10-g sample cut into pieces small enough to fit into the crucible.

3.3 Place the sample in the crucible. (**Note 1:** To test without the use of a crucible, see Note 2 after Section 4.8.)

3.4 Condition the sample in the furnace set at 105 ± 3 °C (221 ± 9 °F) for 5 minutes ± 30 seconds.

4.0 Procedure

4.1 Condition each sample by drying for 5 minutes ± 30 seconds at 105 ± 3 °C (22 ± 5 °F).

4.2 Remove the test sample from the furnace and cool in the desiccator for 30 minutes in the standard atmosphere for testing glass textiles.

4.3 Place the empty crucible in the furnace at 625 ± 25 °C (1,157 ± 45 °F). After 30 minutes, remove and cool the crucible in the standard atmosphere (TAPPI method 1008) for 30 minutes.

4.4 Identify each crucible with respect to each test sample of mat.

4.5 Weigh the empty crucible to the nearest 0.001 g. Record this weight as the tare mass, T.

4.6 Place the test sample in the crucible and weigh to the nearest 0.001 g. Record this weight as the initial mass, A.

4.7 Place the test sample and crucible in the furnace and ignite at 625 ± 25 °C (1,157 ± 45 °F).

4.8 After ignition for at least 30 minutes, remove the test sample and crucible from the furnace and cool in the desiccator for 30 minutes in the standard atmosphere (TAPPI method 1008).

4.9 Remove each crucible, and test each sample separately from the desiccator, and immediately weigh each sample to the nearest 0.001 g. Record this weight as the ignited mass, B. (**Note 2:** When it is known that no ash residue separates from the test sample during the weighing and igniting processes, you may weigh the sample separately without the crucible. When this occurs, the tare mass (T) equals zero. With appropriate care, you can dry and weigh a single piece of mat and place with tongs into the ignition oven on appropriate refractory supports. When the ignition time is over, remove the sample as an intact fragile web and weigh it directly on a pan balance.)

5.0 Calculation

5.1 Calculate the LOI for each sample as follows:

$$\% \text{ LOI} = 100 \times (A - B)/(A - T)$$

Where:

A = initial mass of crucible and sample before ignition (g);

B = mass of crucible and glass residue after ignition (g); and

T = tare mass of crucible, (g) (see Note 2).

5.2 Report the percent LOI of the glass mat to the nearest 0.1 percent.

6.0 Precision

The repeatability of this test method for measurements on adjacent specimens from the same sample of mat is better than 1 percent.

[FR Doc. 02–7096 Filed 4–10–02; 8:45 am]

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Thursday,
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Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1280
Lamb Promotion, Research, and Information Order; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1280

[No. LS–01–12]

RIN 0581–AC06

Lamb Promotion, Research, and Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes a Lamb Promotion, Research, and Information Order (Order) under the Commodity Promotion, Research, and Information Act of 1996. The Order provides for an industry-funded promotion, research, and information program for lamb and lamb products including pelts but excluding wool and wool products. The program applies to all sales of sheep and lambs. Under the Order, lamb producers, seedstock producers, feeders, and exporters will pay an assessment of one-half cent ($.005) per pound when live lambs are sold. The first handler, primarily packers, will pay an additional assessment of 30 cents per head of lambs purchased by the first handler for slaughter. The first handler or exporter will remit the total amount of assessment due to the Lamb Promotion, Research, and Information Board (Board).

EFFECTIVE DATE: April 12, 2002.

FOR FURTHER INFORMATION CONTACT: Marlene Betts, Acting Chief; Marketing Programs Branch, Room 2627–S; Livestock and Seed Program, AMS, USDA; STOP 0251; 1400 Independence Avenue, SW.; Washington, DC 20250–0251; telephone (202) 720–1115, fax (202) 720–1125, or e-mail at *marlene.betts@usda.gov.*

SUPPLEMENTARY INFORMATION: This Order is issued pursuant to the Commodity Promotion, Research, and Information Act of 1996 (Act), 7 U.S.C. 7411–7425; Public Law 104–127, enacted April 4, 1996, hereinafter referred to as the Act. Prior documents in this proceeding:

Invitation to submit proposals was published November 23, 1999 [64 FR 65665].

Invitation to submit proposals: Reopening and extension of time to submit proposals was published January 12, 2000 [65 FR 1825].

Proposed Rule—Lamb Promotion, Research, and Information Order was published September 21, 2001 [66 FR 48764].

Executive Orders 12988 and 12866

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under § 519 of the Act, a person subject to the Order may file a petition with the Department of Agriculture (Department) stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and requesting a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within 2 years after the effective date of the Order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Department will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or carries on business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the final ruling.

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency examined the impact of this rule on small entities and has prepared a final regulatory flexibility analysis. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

The Act authorizes generic programs of promotion, research, and information for agricultural commodities. Congress found that it is in the national public interest and vital to the welfare of the agricultural economy of the United States to maintain and expand existing markets and develop new markets and uses for agricultural commodities through industry-funded, Government-supervised, generic commodity promotion programs.

This Order is intended to develop and finance an effective and coordinated program of promotion, research, and information to maintain and expand the markets for lamb and lamb products. In response to invitations to submit proposals published in the **Federal Register** November 23, 1999 [64 FR 65665], and January 12, 2000 [65 FR 1825], a proposed Order developed by the Lamb Industry Checkoff Exploration Team was submitted by the American Sheep Industry Association (Proponent I). Proponent I proposed a program assessing lamb producers, feeders, first handlers, and seedstock producers. In addition, two partial proposals were submitted by the National Lamb Feeders Association (Proponent II) and the United States Seedstock Alliance (Proponent III). Proponent II proposed definitions for feeder, producer, and seedstock producer and that the Department should be authorized to appoint only one feeder representative who annually feeds 5,000 or more head of lambs and to appoint two feeders who annually feed less than 5,000 head of lamb. Proponent III proposed that the Order be approved in a referendum by a majority of those voting.

While the Order imposes certain recordkeeping and reporting requirements on persons subject to the Order, the information required under the Order can be compiled from records currently maintained. First handlers and exporters will collect and remit the assessments on lamb and lamb products to the Board. Their responsibilities will include accurate recordkeeping and accounting of the number of lambs purchased, the names of the producers, seedstock producers, and feeders, and the purchase date. The required reporting forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. Such records and reports shall be retained for at least 2 years beyond the fiscal year of their applicability. These requirements are already being conducted as a normal business practice. In addition, a person who is a market agency; i.e., commission merchant, auction market, or livestock market in the business of receiving lambs for sale on commission for or on behalf of a producer, seedstock producer, or feeder will be required to collect an assessment and pass the collected assessments on to the subsequent purchaser. There will be a minimal burden on persons who are market agencies. It is not anticipated that they will be required to submit records of their transactions involving lamb purchases and the required assessment collection to the Board.

Information on such transactions can be obtained through an audit of the market agencies' records. Such records are already being maintained as a normal business practice. This will include such records or documents that evidence payment of an assessment pursuant to the requirements in § 1280.225(b). In addition, market agencies must certify as required by regulations prescribed by the Department that the provisions of § 1280.217(b) have been met.

First handlers of lambs who seek nomination to serve on the Board will be required to complete a nomination form that will be submitted to the Department.

The added burden to first handlers and exporters for a lamb promotion, research, and information program is therefore minimal.

There is also a minimal burden on producers, seedstock producers, and feeders. The burden relates to those producers, seedstock producers, and feeders who will seek nomination to serve on the Board, request a refund of assessments paid, and vote in referenda. In addition, the Order will require producers, seedstock producers, and feeders to provide information to the Board or the Department when requested and to keep records to qualify for a refund. However, it is not anticipated that producers, seedstock producers, and feeders will be required to regularly submit assessment forms to the Board. In some instances, as part of the Board's compliance operation, the information will be obtained through an audit of producer's, seedstock producer's, or feeder's records to confirm information provided by a first handler or if a first handler did not file the required reports. When seeking nomination to serve on the Board, producers, seedstock producers, feeders, and first handlers will be required to complete one form that will be submitted to the Department by a certified organization able to make nominations.

The estimated annual cost of providing the required information to the Board by an estimated 70,804 respondents (51,800 producers, 15,000 seedstock producers, 3,318 market agencies, 571 first handlers, 100 feeders, and 15 exporters) is $989,840 or $13.98 per respondent.

Once the program is implemented, the Department will oversee program operations and conduct a referendum not later than 3 years after assessments first begin under this part. In accordance with the Act, subsequent referenda will be conducted (1) not later than 7 years after assessments first begin to determine whether lamb producers, seedstock producers, feeders, first handlers, and exporters support continuation of the program, (2) at the request of the Board established under the Order, or (3) at the request of 10 percent or more of the number of persons eligible to vote in referenda. Additionally, the Department may conduct a referendum at any time to determine whether the continuation, suspension, or termination of the Order or a provision of the Order is favored by those eligible to vote in the referendum.

There are approximately 51,800 producers, 15,000 seedstock producers, 100 feeders, 571 first handlers, and 15 exporters of lamb who will be subject to the program. Most of the lamb producers, seedstock producers, feeders, and exporters would be classified as small businesses under the criteria established by the Small Business Administration (SBA) (13 CFR 121.201). Most first handlers would not be classified as small businesses. SBA defines small agricultural handlers as those whose annual receipts are less than $5 million and small agricultural producers are defined as those having annual receipts of less than $750,000.

To compete against rising foreign imports and flat domestic demand, the domestic lamb industry proposed a promotion and research checkoff program to improve production efficiency and promote consumption.

The domestic lamb industry is composed of two groups: lamb producers and lamb packers and processors. Domestic lamb producers can be further divided into three groups: (1) Breeders of purebred sheep and lambs used for breeding purposes, (2) commercial market producers who maintain sheep flocks to produce lambs for feeding and slaughter, and (3) commercial feed lot operators who feed lambs until ready for slaughter. The groups overlap and firms often perform two or more operations. Although many sheep production operations are located in the east, the majority of sheep are concentrated in the western and corn belt States. In the west and southwest, sheep production can be the most productive use of the land in some areas.

Packers and processors are the second component of the domestic lamb industry. Lamb packers are companies that slaughter lambs. Most packers also slaughter one or more other types of livestock. This part of the industry includes eight federally inspected firms accounting for 96 percent of the domestically slaughtered sheep and lambs. Processors, along with some packers, break lamb carcasses into different cuts. There are less than 10 major processing firms and, like the packers, only a small portion of their operations are devoted to processing lamb.

Domestic lamb producers have been competing with surging foreign lamb imports. Between 1993 and 1997, lamb imports increased by 49.3 percent from 56.5 million pounds to 84.4 million pounds. The greatest increase in imports occurred during the period 1996 through 1997, when imports rose by 18.5 percent. Imports in 1998 were 30 percent above those in 1997, and imports in the first quarter of 1999 were 10 percent above those in the first quarter of 1998. As measured by quantity, imports captured 23.3 percent of the domestic market in January through September 1998, up from 11.2 percent in 1993. The loss of market share is magnified by the fact that domestic per capita lamb meat consumption dropped from 1.3 pounds in 1993 to 1.1 pounds in 1995 where it remained through 1997.

Increasingly, imports have shifted away from frozen, unprocessed carcasses to value-added product categories. In 1993, fresh or chilled lamb meat accounted for only 20 percent of imports. By 1997, the figure had doubled to 40 percent. Processed lamb, particularly boneless cuts, have replaced lamb carcasses. Carcasses represented only 3 percent of 1997 imports whereas bone-in and boneless boxed lamb cuts accounted for 66.8 percent and 30.2 percent, respectively, of the carcass-equivalent volume of imported lamb meat. Between January 1993 and June 1998, prices on imported Australian and New Zealand lamb, which account for virtually all imported lamb, were anywhere from 9.4 percent to 70.3 percent less expensive than domestic products.

With the increase in lamb imports, the domestic production, packing and processing of lamb has dropped significantly. Domestic lamb meat production declined by 26 percent from 326.7 million pounds in 1993 to 243 million pounds in 1999. Production was down 3 percent in May of 2000 compared to the same period in 1999. Domestic producers' share of the net sales value on lamb has also declined with imports representing 30.7 percent in January through September 1998, up from 11.2 percent in 1993. The number of domestic lamb producers has decreased from 93,280 in 1993 to 74,710 in 1997, a 20 percent decline. With an estimated 2.2 workers per operation, the decline in lamb producers translates into a drop in workers from 205,216 in 1993 to 164,362 in 1997. Federally

inspected sheep and lamb slaughtering plants have declined from 711 to 571. Only 9 plants can slaughter more than 100,000 sheep and lambs annually. One was closed in 1995 and another was closed in 1998.

Imports have also affected prices and sales. Direct prices for slaughter lambs dropped by 25 percent between the first quarter of 1997 and the first quarter of 1998. During the second quarter of 1998, direct prices were 17.6 percent lower than prices during the same period in 1997. Similarly, for the same periods, auction prices fell by 20.5 percent and 14.9 percent, respectively. For packers, prices on carcasses dropped 30.8 percent between September 1997 and April 1998.

In response to the surge in imports, domestic producers along with packers and processors filed a petition with the International Trade Commission (ITC) seeking import relief. ITC conducted an investigation (Investigation No. TA 201–68) and found that imports have depressed prices and sales of domestic lamb causing serious harm to domestic producers' financial conditions (ITC Publication 3176, April 1999). It also found that although there is evidence that U.S. consumers prefer domestically produced lamb, domestic producers engage in little or no promotion. In recommending relief, a majority of the commissioners stressed the need for an industry marketing program supported by checkoff funds to improve production efficiency and increase demand.

Because of the decline in the domestic lamb industry caused by imports and flat demand, domestic producers are seeking ways to reverse this trend. A checkoff program to promote and market domestic lamb products is one way this could be accomplished. A coordinated promotion and marketing effort will help domestic producers compete more effectively against imports while increasing demand for lamb. It will also permit domestic producers to fund projects to develop more effective and efficient production processes. More efficient production along with increased demand will lead to higher, more stable prices for producers, packers, and processors.

The Order authorizes that a mandatory assessment be paid by producers, seedstock producers, exporters, and feeders at a rate of one-half cent ($.005) per pound of live lamb sold. First handlers will pay an additional assessment of 30 cents ($.30) per head of lambs purchased by the first handler for slaughter and will remit the total amount of assessment due to the Board.

At the rate of assessment of one-half cent ($.005) per pound of live lamb sold and the additional $.30 paid by packers on slaughter lambs, the Board will collect approximately $3 million annually. It is expected that the assessment represents less than 1 percent of producers' average return.

The program will be administered by the Board appointed by the Department from nominations submitted by certified industry organizations. The Department will certify industry organizations that will nominate producers, seedstock producers, feeders, and first handlers to serve as members on the Board. The Board will recommend the assessment rate, programs and projects, budgets, and any rules and regulations that might be necessary for the administration of the program.

The Board will consist of 13 members: six producer representatives, three feeder representatives, three first handlers, and one seedstock producer. The members primarily will be nominated by eligible regional, State, and national organizations.

The recordkeeping and reporting requirements for the Order have been designed to ensure compliance and generate the data necessary for the effective conduct of the program.

With regard to alternatives to this rule, the Act itself provides authority to tailor a program according to the individual needs of an industry. Section 514 of the Act provides for orders applicable to producers, first handlers, and other persons in the marketing chain as appropriate. Provision is made for permissive terms in an order in § 516 of the Act and authorizes an order to provide for coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for assessing imports; provision for reserve funds; and provision for credits for generic and branded activities. In addition, § 518 of the Act provides for a referendum to ascertain approval of an order to be conducted either prior to its going into effect or within 3 years after assessments first begin under an order. An order also may provide for its approval in a referendum to be based upon (1) a majority of those persons voting; (2) persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. Section 515 of the Act provides for establishment of a board from among producers, first handlers, feeders, and others in the marketing chain as appropriate.

This Order includes provisions for domestic expansion and improvement and a delayed referendum to be conducted within 3 years after assessments begin. The Order will continue if a majority of those persons voting in the referendum who also represent a majority of the volume of lambs produced, slaughtered, or exported during the representative period established by the Department.

The Department has not identified any relevant Federal rules that are currently in effect that duplicate, overlap, or conflict with this rule. The proposed rule that was published in the **Federal Register** on September 21, 2001 [66 FR 48763], invited interested persons to submit comments to the Department concerning potential effects of the proposed Order. No comments were received regarding the RFA.

Paperwork Reduction Act

In accordance with OMB regulation (5 CFR Part 1320) that implements the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by this Order were submitted to OMB for approval and approved under OMB control numbers 0581–0198 and 0505–0001.

Title: Lamb Promotion, Research and Information Order.

OMB Number: 0505–0001. Expiration Date of Approval: July 31, 2002

OMB Number: 0581–0198.

Expiration Date of Approval: 3 years from date of approval.

Type of Request: Approval of new information collection.

Abstract: The information collection requirements in the request are essential to carry out the intent of the Act.

Under the Order, first handlers and exporters will be required to collect assessments from lamb producers, feeders, and seedstock producers and submit the required reports and remit assessments to the Board. Persons who are market agencies will be required to collect an assessment and pass the collected assessments on to the subsequent purchaser. It is not anticipated that they will be required to submit records of their transactions involving lamb purchases and the required assessment collection to the Board. While the Order will impose certain recordkeeping requirements on persons subject to the Order, information required under the Order can be compiled from records currently maintained. Such records will be retained for at least 2 years beyond the

fiscal year of their applicability. The estimated annual cost of providing the information to the Board by an estimated 70,804 respondents (51,800 producers, 15,000 seedstock producers, 3,318 market agencies, 571 first handlers, 100 feeders, and 15 exporters) is $989,840 or $13.98 per respondent. Each first handler and exporter responsible for the collection of assessments and remittance of the assessments to the Board, will do so by the 15th day of the month following the month in which lambs were purchased for slaughter, exported, or lambs or lamb products were marketed directly to a consumer. It is anticipated that the bulk of assessments will be submitted to the Board by first handlers who purchased lambs for slaughter. A person such as a producer or feeder is considered a first handler when that person markets lamb or lamb products of their own production directly to a consumer.

The Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements.

The forms will require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Board. The forms will be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

The timing and frequency of collecting information are intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports. In addition, the information to be included on these forms is not available from other sources because such information relates specifically to individual producers, feeders, seedstock producers, first handlers, and exporters who are subject to the provisions of the Act. Therefore, there is no practical method for collecting the required information without the use of these forms.

Information collection requirements that are included in this Order include:

(1) Background Information Form (AMS–755)

Estimate of Burden: Public reporting for this collection of information is estimated to average 0.5 hours per response for each producer, feeder, seedstock producer, and first handler nominated to serve on the Board.

Respondents: Producers, seedstock producers, feeders, and first handlers.

Estimated number of Respondents: 10 (26 for initial nominations to the Board, 8 in the second year, and 8 in the third year).

Estimated number of Responses per Respondent: 1 every 3 years.

Estimated Total Annual Burden on Respondents: 13 hours for the initial nominations to the Board and 4 hours annually thereafter.

Total Cost: $260 initial, $80 thereafter.

(2) Requirement to Maintain Records Sufficient to Verify Reports and Requests for Refunds Submitted Under the Order

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average 0.6 hours per record keeper maintaining such records.

Recordkeepers: Producers, seedstock producers, feeders, market agencies, first handlers, and exporters.

Estimated number of Recordkeepers: 71,039.

Estimated Total Recordkeeping Hours: 42,623.4 hours.

Total Cost: $852,468.

(3) Monthly Remittance Report Form (LS–81)

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour per first handler and exporter.

Respondents: First handlers and exporters.

Estimated Number of Respondents: 586.

Estimated Number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 7,032 hours.

Total Cost: $140,640.

(4) Application for Refund Form (LS–85)

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per response.

Respondents: Producers, seedstock producers, first handlers, feeders, and exporters.

Estimated number of Respondents: 67,486.

Estimated Total Annual Burden: 16,871.5 hours.

Total Cost: $337,430.

(5) Application for Certification of Organization Form (LS–82)

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: National, State, or regional lamb associations or organizations.

Estimated number of Respondents: 20.

Estimated number of Responses per Respondent: 1

Estimated Total Annual Burden: 10 hours.

Total Cost: $200.

(6) Nomination for Appointment to the Lamb Board Form (LS–84)

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: National, State, or regional lamb associations and organizations.

Estimated number of Respondents: 20.

Estimated number of Responses per Respondent: 1 per year.

Estimated Total Annual Burden: 10 hours.

Total Cost: $200.

(7) Statement of Certification (Lamb Promotion, Research, and Information Order) (LS–83)

Estimate of Burden: The Deputy Administrator or designee of the Agricultural Marketing Service's (AMS), Livestock and Seed Program will sign this form certifying eligible organizations to make nominations to the Board. Because only AMS employees will complete this form, the estimated average reporting burden would not apply to the public.

The burden hours reported in the final rule reflect a decrease of 141 hours from the proposed rule. This decrease was the result of a mathematical error in calculating the total number of respondents.

In the proposed rule published September 21, 2001 [66 FR 48763], comments were invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Order and the Department's oversight of the program, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology. No comments were received regarding the information collection section.

Background

The Act authorizes the Department to establish agricultural commodity research and promotion orders. The Act provides for the submission of proposals for a lamb promotion, research, and information order by industry organizations or any other interested persons affected by the Act. Section 516 of the Act provides permissive terms for orders, and other sections provide for alternatives. For example, § 514 of the Act provides for orders applicable to (1) producers, (2) first handlers, (3) feeders and others in the marketing chain as appropriate. Section 516 authorizes an order to provide for exemption of de minimis quantities of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; provision for credits for generic and branded activities; and assessment of imports. In addition, § 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within 3 years after assessments first begin under the order. The Act authorizes three different voting methods for approving an order in a referendum. Section 515 provides for establishment of a board from among producers, seedstock producers, first handlers, feeders, and others in the marketing chain as appropriate.

This Order includes provisions for both domestic and foreign market expansion and improvement and a delayed referendum to be conducted within 3 years after assessments begin. The Order will continue if a majority of those persons voting who also represent a majority of the volume of lambs produced, slaughtered or exported during the representative period established by the Department.

The Act authorizes the establishment and operation of generic promotion programs that may include a combination of promotion, research, and information activities funded by mandatory assessments. These programs are designed to maintain and expand markets and uses for agricultural commodities. This Order provides for the development and financing of an effective and coordinated program of research, promotion, and information for lamb and lamb products. The purpose of the Order is to strengthen the position of lamb and lamb products in domestic and foreign markets, and to develop, maintain, and expand markets for lamb and lamb products. The Order will be continued subject to its approval in a delayed referendum conducted by the Department. Section 518 of the Act provides for the Department (1) to conduct a required referendum, preceding a proposed Order's effective date, among persons who would be subject to assessments under the program or (2) to implement a proposed Order, pending the conduct of a referendum, among persons subject to assessments, within 3 years after assessments first begin. In accordance with section 518(e) of the Act, an Order may provide for its approval in a referendum based upon (1) a majority of those persons voting; (2) persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. This Order provides for a delayed referendum to be conducted using the third approval option. Thus, the Department will conduct a referendum within 3 years after assessments first begin, in which approval of the Order will be determined by a majority of persons voting for approval who also represent a majority of the volume of lamb production represented in the referendum. The Act also requires the Department to conduct subsequent referenda: (1) Not later than 7 years after assessments first begin under the Order; (2) at the request of the Board established under the Order; or (3) at the request of 10 percent or more of the number of persons eligible to vote. In addition to these criteria, the Act provides that the Department may conduct a referendum at any time to determine whether the continuation, suspension, or termination of the Order or a provision of the Order is favored by persons eligible to vote.

The Order also contains provisions that will allow persons to request a refund of assessments paid during the period beginning on the effective date of the Order and ending on the date the Department announces the results of the required referendum. The refunds will be paid from an escrow account established by the Board as provided for in § 1280.214(c). Persons who file a request for refunds during the specified time period will be entitled to a refund of assessments paid from the effective date of the Order until the Department announces the results of the referendum. If the amount in the escrow fund is less than the total refunds demanded, persons entitled to a refund will receive a pro rata share.

A national research and promotion program for lamb and lamb products will help the industry to address the many market problems it currently faces. Domestic lamb producers have been competing with surging foreign lamb imports, competition from other meat and poultry, and changing consumer meat buying preferences.

Increased funding will allow the industry to expand its current consumer, food service, and food manufacturer promotion efforts. Also it will allow for increased participation in the Department's Market Access Program and the opportunity to develop stronger markets overseas. In addition, such a program will create the opportunity to explore tie-in promotional activities with nationally branded food products that will help the lamb industry gain advertising and in-store exposure.

The assessment levied on domestically-produced lamb will be used to pay for promotion, research, and information as well as administration, maintenance, and functioning of the Board. Expenses incurred by the Department in implementing and administering the Order, including referenda costs, also will be paid from assessments.

Sections 516(e)(1) and (2) of the Act states that the Department may provide credits of assessments for generic and branded activities. The Order does not contain such provisions. Therefore, the terms generic activities and branded activities are not defined in the Order.

First handlers and exporters will be responsible for the collection of assessments and remittance of assessments to the Board. First handlers and exporters will be required to maintain records of lambs purchased from each producer, seedstock producer, and feeder, by the first handler or exporter, including lambs produced or fed by the first handler or exporter. First handlers and exporters will be required to file reports regarding the collection, payment, and remittance of the assessments. In addition, a person who is a market agency; i.e., commission merchant, auction market, or livestock market in the business of receiving lambs for sale on commission for or on behalf of a producer, seedstock producer, or feeder will be required to collect the assessment and pass the collected assessments on to the subsequent purchaser and if applicable certify as required by regulations approved by the Department that the

provisions of § 1280.217(b) have been met.

All information obtained from persons subject to this Order as a result of recordkeeping and reporting requirements will be kept confidential by all officers, employees, and agents of the Department and of the Board. This information may be disclosed only if the Department considers the information relevant, and the information is revealed in a judicial proceeding or administrative hearing brought at the direction or on the request of the Department or to which the Department or any officer of the Department is a party. Other exceptions for disclosure of confidential information include the issuance of general statements based on reports or on information relating to a number of persons subject to an order if the statements do not identify the information furnished by any person, or the publication, by direction of the Department, of the name of any person violating the Order, and a statement of the particular provisions of the Order violated by the person.

The Act requires that an order provide for the establishment of a board to administer the program under the Department's supervision. This Order provides for a 13-member Board to ensure fair and equitable representation of the lamb industry on the Board. The Act requires membership on the Board to reflect the geographical distribution of the production of lamb and lamb products. To that end, the Order divides the United States into two geographic regions with each region being represented by at least two lamb producers and the remaining two producers appointed at the Department's discretion. Such at large selections by the Department will not be chosen or bound by any specific geographic region. There will be three lamb feeder members on the Board. At least one feeder will feed less than 5,000 lambs annually, at least one feeder will feed 5,000 or more lambs annually and the remaining feeder will be appointed at the Department's discretion and will not be chosen or bound by size requirements. Three first handlers and one seedstock producer will be appointed as members of the Board. Members will serve for 3-year terms, except that the members appointed to the initial Board will serve proportionately for 1, 2, and 3 years. No member will serve more than two consecutive 3-year terms.

Upon implementation of the Order and pursuant to the Act, the Board will at least once in each 5-year period, but not more frequently than once in each 3-year period, review the geographical distribution of lamb in the United States and make a recommendation to the Department after considering the results of its review and other information it deems relevant regarding the reapportionment of the Board.

In response to invitations to submit proposals published in the **Federal Register** November 23, 1999 [64 FR 65665], and January 12, 2000 [65 FR 1825], a proposed Order developed by the Lamb Industry Checkoff Exploration Team was submitted by the Proponent I. Proponent I proposed a program assessing lamb producers, feeders, first handlers, and seedstock producers. In addition, two partial proposals were submitted by Proponent II and Proponent III. Proponent II proposed definitions for feeder, producer, and seedstock producer and that the Department should be authorized to appoint only one feeder representative who annually feeds 5,000 or more head of lambs and to appoint two feeders who annually feed less than 5,000 head of lamb. Proponent III proposed that the Order be approved in a referendum by a majority of those voting.

The Order is summarized as follows: Sections 1280.101 through 1280.129 of the Order define certain terms such as lamb, producer and first handler, which are used in the Order.

Sections 1280.201 through 1280.211 include provisions relating to the Board. These provisions cover establishment and membership, nominations, nominee's agreement to serve, appointment, vacancies, certification of organizations, term of office, compensation, removal, prohibited activities, and powers and duties of the Board, which is the governing body authorized to administer the Order through the implementation of programs, plans, projects, budgets, and contracts to promote and disseminate information about lamb and lamb products, subject to oversight of the Department.

Sections 1280.212 through 1280.216 cover budget and expenses; require the Board to submit a budget for the fiscal year covering anticipated expenses and disbursements, investment of funds, escrow accounts, refunds, and procedures for obtaining a refund.

Sections 1280.217 through 1280.221 cover lamb purchases and authorize the collection of assessments; specify limitations on the use of funds; and specify who pays the assessment and how.

Sections 1280.222 through 1280.227 cover maintaining books and records, accounting for the receipt and disbursement of all funds; reports from each first handler to the Board including the number of lambs purchased and amount remitted, and use and confidentially of information. Also, every 5 years, the Board funds an independent evaluation of the program.

Sections 1280.228 through 1280.236 discuss the rights of the Department; personal liability; separability; patents, copyrights, inventions, product formulations, and publications; amendments; referenda, which will be delayed (required referenda); suspension or termination; proceedings after termination; and effects of termination or amendment.

On June 25, 2001, the United States Supreme Court issued a decision in the case of *United States* v. *United Foods, Inc. (United Foods),* that held that the imposition of mandatory assessments to fund generic mushroom advertising violated the First Amendment insofar as it required the mushroom industry to subsidize commercial speech with which they disagreed. The Court expressly declined to reach the question whether the generic advertising conducted under the mushroom program constitutes Government speech.

Comments

AMS issued invitations to submit proposals for an Order in the November 23, 1999 [64 FR 65665], and January 12, 2000 [65 FR 1825], issues of the **Federal Register**. In response to invitations to submit proposals, a proposed Order developed by the Lamb Industry Checkoff Exploration Team was submitted by the Proponent I. Proponent I proposed a program assessing lamb producers, feeders, first handlers, and seedstock producers. In addition, two partial proposals were submitted by the Proponent II and Proponent III. Proponent II proposed definitions for feeder, producer, and seedstock producer and that the Department should be authorized to appoint only one feeder representative who annually feeds 5,000 or more head of lambs and to appoint two feeders who annually feed less than 5,000 head of lamb. Proponent III proposed that the Order be approved in a referendum by a majority of those voting. As provided in the Act, on September 21, 2001, AMS published the proposed Order for comment [66 FR 48764]. The comment period ended November 20, 2001.

The Department received 242 comments in a timely manner. In addition, six late comments were received. The late comments generally reflected the substance of comments timely received. The bulk of comments were submitted by individual lamb producers. About 49 comments were

received from organizations representing lamb producers, feeders, and farmers. The comments have been posted on AMS' website at *(http://www.ams.usda.gov/lsg/mpb/rp-lamb.htm).*

The changes suggested by commenters are discussed below, along with the changes made by the Department upon further review. Also, the Department has made other miscellaneous changes for the purpose of clarity and accuracy. For the readers' convenience the discussion of comments is organized by the topic headings of the proposed rule.

Background Section

One commenter stated that the background of the proposed Order gives an unworthy goal of trying to compete with imports and suggested that the goal should be to cooperate with importers to increase total lamb consumption. Section 1280.210(m) of the Order states that the duty of the Board is to work to achieve an effective, continuous, and coordinated program of promotion, research, and information designed to strengthen the lamb industry's position in the marketplace; maintain and expand existing markets and uses for lamb and lamb products; and to carry out programs, plans, and projects designed to provide maximum benefits to the lamb industry. The program will be funded entirely with assessments on the domestic lamb industry. Accordingly, this suggestion is not adopted.

Definitions

Section 1280.108 First Handler

One commenter suggested that the definition of first handler should be modified to clarify that it is a packer. Section 1280.108 of the Order states that the term first handler ''means the packer or other person * * *''. The Department believes that the current definition sufficiently defines that the first handler includes packers. Accordingly, this change is not needed as a result of this comment.

Section 1280.111 Lamb

One commenter suggested that the definition of lamb should be ''every sheep sold, whatever age.'' The Department believes that the proposed definition of lamb, which uses the term ''ovine''—meaning of or relating to sheep—sufficiently indicates that all sheep are covered by the Order and is generally accepted by the industry. Accordingly, this suggestion is not adopted.

Lamb Promotion, Research, and Information Board

Section 1280.201 Establishment and membership

One commenter suggested that the Board should have four producer members from west of the Mississippi and two producer members east of the Mississippi to more fairly represent the demographics of sheep producers and sheep numbers. Another commenter suggested that the size and geographic requirements for producer representatives on the Board should be relaxed. Due to geographical concerns and the size of producer operations issues to be considered when the Department is making appointments to the Board, the Department believes that simply changing the number of producers representing the regions could be unduly restrictive. However, § 1280.201(a)(1) of the Order has been modified so that each region will be represented by at least two producers and that the remaining two producers will be appointed at the Department's discretion. Such at large selections by the Department will not be chosen or bound by any specific geographic region. This modification will allow the Department the flexibility to appoint producers as deemed necessary.

One commenter suggested that producers should be able to vote for nominees to the Board. Section 1280.202 of the Order provides that only eligible certified organizations representing producers, feeders, first handlers, or seedstock producers may submit nominations for the Board for the Department's consideration. The membership of each certified organization is charged with nominating qualified individuals. Producers are members of such organizations and their interests are represented through these organizations. Accordingly, this suggestion is not adopted.

One commenter suggested that the Board should be larger and more inclusive so that it fairly represents the entire industry. Two commenters suggested that packers need additional seats on the Board that would be representative of their financial contributions to the program. The Department believes that the Board accurately represents all interests of the industry—producers, feeders, seedstock producers, and packers. However, § 1280.201 has been modified to provide first handlers with an additional seat to better reflect their participation in the industry. Accordingly, this suggestion has been adopted in part.

One commenter suggested that the number of feeder representatives on the Board should be reduced to one and that the Board should have two ''friends of the industry'' members who have business experience in marketing. The Department believes that the proposed composition of the Board fairly represents the stakeholders of the industry and does not believe ''friends of the industry'' members are necessary. Therefore, this suggestion is not adopted.

One commenter suggested that potential Board members should have business experience in finance, marketing, and distribution. Certified State, regional, or national organizations are charged with nominating the individuals they believe are most qualified to serve on the Board and may consider such criteria if they choose. Accordingly, this suggestion is not adopted.

One commenter suggested that the Department may have difficulty complying with the criteria for appointing feeders in that it could be difficult to find a feeder of over 5,000 head annually east of the Mississippi. The commenter suggested that the language be modified to say ''at least'' one feeder who feeds more than 5,000 head annually as opposed to the current requirements of one feeder who feeds less than 5,000 annually and two feeders who feed more than 5,000 head annually. The Department believes that this suggestion has merit because it may be difficult to find feeders who feed more than 5,000 head annually east of the Mississippi. In order to provide the Department greater flexibility in making appointments, § 1280.201(a)(2) of the Order has been modified so that the Department will appoint at least one feeder representative who feeds 5,000 head or more annually and at least one feeder representative who feeds less than 5,000 head annually. The third feeder representative will be appointed at the Department's discretion and will not be chosen or bound by size requirements. Accordingly, this suggestion has been adopted in part.

Section 1280.202 Nominations

Several commenters suggested that the number of Board members appointed from nominations submitted by any one certified organization should be limited to four. The Department believes that such a limitation could unduly restrict the Department from making appointments to the Board as well as unduly restrict the certified organizations from making nominations for appointment to the Board. Accordingly, this suggestion is not adopted.

Section 1280.210 Powers and Duties of the Board

One commenter suggested that the Department should be required to issue an annual report detailing the Board's activities. Section 1280.210(n) of the Order requires the Board to provide, not less than annually, a report accounting for the funds expended by the Board and describing programs implemented under the Act. Annual reporting by the Department as suggested by the commenter would be duplicative of the Board's actions. Accordingly, this suggestion is not adopted.

Several commenters expressed concern that there will not be sufficient funds generated to carry out all three focus areas of the Order. Several other commenters suggested that all checkoff dollars should be used to develop and produce an advertising program for lamb and lamb products. The Act provides for a coordinated program of generic promotion, research, and information activities and places the responsibility with the Board, subject to approval of the Department, to ensure that funds are allocated among the focus areas of the Order. The Department believes that the Order provides the necessary framework for the Board to meet the objectives as set forth in the Act. Accordingly, this suggestion is not adopted.

One commenter suggested that money for grower education efforts should be limited to project information and financial statements because too much money is spent on communicating with producers in other promotion programs. Board members will make recommendations, subject to the approval of the Department, as to how the checkoff dollars should be allocated among the various program areas. Accordingly, this suggestion is not adopted.

One commenter suggested that there should be a limit on contracts to a contractor in that no single entity should be permitted to receive more than 50 percent of checkoff funds available each year for promotion, research, and information activities. The Department believes that it is best to provide flexibility to the Board when contracting for services. In addition, all contracts in which the Board enters will be subject to final approval by the Department. Accordingly, this suggestion is not adopted.

One commenter suggested that funds from the national program should be used to supplement activities currently being conducted by State organizations. The Act does not provide authority for national program funds to be shared with State programs. However, the Act and Order do not prohibit the Board from conducting joint research, promotion, and information activities with State or national organizations. Accordingly, this suggestion is not adopted.

Section 1280.212 Budget and Expenses

One commenter expressed concern that a majority of the assessments collected will be used for staffing and administrative costs. Section 1280.212(g) of the Order limits the amount of money that can be used for administrative expenses to 10 percent of the Board's income for that fiscal year, except for the initial fiscal year.

One commenter suggested that petitioners for a checkoff should have to reimburse the Department for any expenses to conduct a referendum. Section 518(c)(3) of the Act and § 1280.233(b)(3) of the Order provide for eligible persons to request a referendum. Section 518(f) of the Act and § 1280.233(d) of the Order state that the Board shall reimburse the Department for any expenses incurred by the Department to conduct referenda. Accordingly, no change is adopted as a result of this comment.

Section 1280.214 Refund Escrow Accounts

One commenter suggested that the Board should have to set aside 100 percent of funds so that 100 percent of the refund requests can be paid. Another commenter suggested that the Department should clarify that refunds requested prior to the announcement of the referendum results will be paid in full. Section 517(g) of the Act provides that ten percent of the assessments collected be placed in an escrow account and for a pro rata share to be paid if assessments are not sufficient to reimburse 100 percent of the refunds requested. The Act also states that refunds can only be provided after the results of the referendum are announced. Accordingly, this suggestion is not adopted.

Assessments

Section 1280.217 Lamb Purchases

One commenter expressed confusion as to how assessments would be paid by an individual who sells lamb and lamb products of his own production directly to consumers. Sections 1280.217(c) and (e) of the Order state that each person processing or causing to be processed lamb or lamb products of that person's own production and marketing such lamb or lamb products is required to pay an assessment of one-half of a cent per pound on the live weight of the lamb at the time of slaughter. In addition, pursuant to § 1280.108 of the Order, such individual would be considered a first handler and would be required by § 1280.219 of the Order to pay an additional assessment of $.30 per head. As a first handler, the individual must remit the total amount of assessment to the Board.

Several commenters suggested that packers should be required to pay more into the program. The rate of assessment was recommended in the proposal submitted by Proponent I based on recommendations by the Lamb Industry Checkoff Exploration Team in collaboration with other members of the industry. The Department believes that this assessment rate properly reflects the position of packers in the industry and is reasonable at this time. Accordingly, this suggestion is not adopted.

Several commenters suggested that the Order should have a provision for assessing imported lamb and lamb products. Section 517(a) of the Act provides that importers may be assessed if they are covered under the Order. The proposed Order submitted by Proponent I did not provide for the assessment of imports. It is the desire of most of the industry at this time to exclude assessing imports so that ''American lamb'' can be promoted. If importers were to be assessed, this may not be possible. In the mid-1990's a Sheep and Wool Promotion, Research, Education, and Information Order was proposed to the lamb industry, which included importers. This proposed program was not approved in the referendum by producers, feeders and importers, and it is believed that including importers in the sheep program may have contributed to its failure. The Department does not believe that a change in this provision is warranted. Accordingly, this suggestion is not adopted.

Several commenters believe that many producers may have to pay both a State and national checkoff due to current programs that are already in place at the State level. The commenters further assert that promotion programs that are now run through the State organizations will be hurt because of the loss of voluntary contributions that will likely occur when the national program is put in place. Many State checkoff programs are voluntary. Neither the Act nor the Order prohibits the Board from conducting joint research, promotion, and information activities with State or national organizations.

Miscellaneous

Section 1280.233 Referenda

Several commenters oppose having the Order subject to continuance in a delayed referendum. The commenters suggested that those subject to the program should have the right to vote on its approval prior to beginning assessments. Section 518 of the Act provides for the Department (1) to conduct a required referendum, preceding a proposed Order's effective date, among persons who would be subject to assessments under the program or (2) to implement a proposed Order, pending the conduct of a referendum, among persons subject to assessments, within three years after assessments first begin. The proposed Order, which recommended approval in a delayed referendum, was drafted utilizing recommendations from both the Lamb Industry Checkoff Exploration Team and from those in the industry. A delayed referendum will provide those subject to the program ample time to judge its effectiveness. A delayed referendum will allow assessments to begin much more quickly so that the industry can implement promotions and other programs as soon as possible. Accordingly, this suggestion is not adopted.

Numerous commenters suggested that continuance referenda should be conducted at various lengths of time, including from every 3 years to every 10 years, to determine if those subject to the program still favor its approval. Section 518(c) of the Act and § 1280.233 of the Order state that the Department shall conduct subsequent referendum: (1) Not later than seven years after assessments first begin under the Order; (2) at the request of the Board established under the Order; or (3) at the request of ten percent or more of the number of persons eligible to vote. In addition, § 518(d) of the Act provides that the Department may conduct a referendum at any time to determine whether continuation, suspension, or termination of the Order or a provision of the Order is favored by persons eligible to vote. The Department believes this provides ample opportunity for conducting additional referenda. Accordingly, the Department believes these suggestions are reflected in the Act and Order.

Several commenters oppose allowing the Department the right to call for a referendum at any time. Section 518(d) of the Act provides that the Department may conduct a referendum at any time to determine whether continuation, suspension, or termination of the Order or a provision of the Order is favored by persons eligible to vote. Therefore, this suggestion is not adopted.

One commenter suggested that a referendum should be required to increase the checkoff rate. While the Order contains no provision for this type of referendum, § 1280.217(e) of the Order has been modified to clarify the process by which the assessment rate may be changed. Periodic referenda provide an opportunity for those that contribute to the program a chance to vote whether to continue, suspend or terminate the program. Accordingly, this suggestion is not adopted.

Several commenters assert that it is unclear how voting by majority volume works and asked how the Department will determine a voter's volume. Another commenter suggested that eligible voters should be defined as producers, feeders, first handlers, and exporters, or their legal representatives who are at least 18 years of age. The Department will issue separate referendum rules at a later date that will describe the voting process.

General

One commenter suggested that implementation of the Order will hinder the marketing efforts currently undertaken by lamb processors in cooperation with some importers. The Order does not preclude processors or other entities from conducting marketing activities with their own funds if they so choose. In addition, the Board may perform joint research, promotion, and information activities with processors to use checkoff dollars in a more effective and efficient manner.

Several commenters suggested that because other checkoff programs are under legal challenge and because of the Supreme Court's ruling on the Mushroom Checkoff Program, a new checkoff program should not be implemented until the fate of the other programs is known. The Department believes and continues to be of the view that the Lamb Promotion, Research, and Information Order as previously proposed and with changes included in this action, is constitutionally sound. Accordingly, this suggestion is not adopted.

A few commenters suggested that because the sheep industry voted down the last proposed checkoff program, a new program should not be implemented. The Department believes that a new lamb research and promotion program is appropriate at this time for several reasons. First, the lamb industry has undergone significant change since the last proposed Order was defeated. In addition, this program is substantially different from the previous program that was voted down. Finally, this new program is based in part on recommendations made by the ITC as part of conducting its investigation concerning the importation of lamb products. Therefore, this suggestion is not adopted.

Several comments were submitted on issues that are not within the scope of this regulation (e.g., country of origin labeling, imported carcass grading, exchange rate with other countries, packer consolidation). Therefore, they will not be considered and will not be addressed herein.

One commenter suggested that the Lamb Industry Checkoff Exploration Team should reconvene to discuss comments and concerns regarding the proposed checkoff. The Department is following the informal rulemaking process in which all comments submitted on the proposed Order have been taken into consideration and responded to by the Department. The proposed rule provided that all interested persons could comment, including the proponents. Accordingly, this suggestion is not adopted.

The Department did not receive any comments on the two partial proposals that were published for comment in the proposed rule. The partial proposal submitted by Proponent II proposed also definitions for feeder, producer, and seedstock producer. These definitions are similar to those proposed by Proponent I. The Department believes that the definitions for the terms as proposed are clear and accurate. Accordingly, the Proponent II definitions have not been adopted. In addition, Proponent II proposed that the size requirements for appointing feeder representatives to the Board should be modified to provide feeders that feed less than 5,000 head of lamb annually with two seats on the Board. In order to provide the Department greater flexibility in making appointments, § 1280.201(a)(2) of the Order has been modified so that the Department will appoint at least one feeder representative who feeds 5,000 head or more annually and at least one feeder representative who feeds less than 5,000 head annually. The third feeder representative will be appointed at the Department's discretion and will not be chosen or bound by size requirements. Accordingly, this partial proposal has been modified and accepted in part.

The partial proposal submitted by Proponent III proposed that the final Order be subject to approval in a referendum by a majority of those persons voting for approval. In accordance with Section 518(e) of the Act, an Order may provide for its

approval in a referendum based upon (1) a majority of those persons voting; (2) persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. The proposed Order, which was submitted by Proponent I based on recommendations by the Lamb Industry Checkoff Exploration Team in collaboration with other members of the industry, recommended that the third approval option be utilized. Accordingly, this proposal has not adopted.

The Department has determined that this Order is consistent with and will effectuate the purposes of the Act. Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**. This action establishes the Order, under the Act, by providing for an industry-funded promotion, research, and information program for lamb and lamb products including pelts but excluding wool and wool products. The program applies to all sales of sheep and lambs. By establishing this rule in a timely manner the domestic lamb industry can more readily begin a national promotion and research program for lamb and lamb products that will help the industry address the marketing difficulties it currently faces.

Accordingly, this rule would benefit the lamb industry by allowing them to establish the Order and begin seeking ways to reverse the decline in the domestic lamb industry. The ITC in recommending relief from imports stressed the need for an industry marketing program supported by checkoff funds to improve production efficiency and increase demand. Given the current need for this checkoff program, it is necessary to implement these regulations as soon as possible.

List of Subjects in 7 CFR Part 1280

Administrative practice and procedure, Advertising, Lamb and Lamb product, Consumer information, Marketing agreements, Reporting and record keeping requirements.

For the reasons set forth in the preamble, Title 7 of Chapter XI of the Code of Federal Regulations is amended by adding part 1280 to read as follows:

PART 1280—LAMB PROMOTION, RESEARCH, AND INFORMATION ORDER

Subpart A—Lamb Promotion, Research, and Information Order

Definitions

Sec.
1280.101 Act.
1280.102 Board.
1280.103 Certified organization.
1280.104 Conflict of interest.
1280.105 Department.
1280.106 Exporter.
1280.107 Feeder.
1280.108 First handler.
1280.109 Fiscal period and marketing year.
1280.110 Information.
1280.111 Lamb.
1280.112 Lamb products.
1280.113 Order.
1280.114 Part and subpart.
1280.115 Person.
1280.116 Producer.
1280.117 Producer information.
1280.118 Promotion.
1280.119 Referendum.
1280.120 Research.
1280.121 Secretary.
1280.122 Seedstock producer.
1280.123 State.
1280.124 Suspend.
1280.125 Terminate.
1280.126 Unit.
1280.127 United States.
1280.128 Wool.
1280.129 Wool products.

Lamb Promotion, Research, and Information Board

1280.201 Establishment and membership.
1280.202 Nominations.
1280.203 Nominee's agreement to serve.
1280.204 Appointment.
1280.205 Vacancies.
1280.206 Certification of organizations.
1280.207 Term of office.
1280.208 Compensation.
1280.209 Removal.
1280.210 Powers and duties of the board.
1280.211 Prohibited activities.

Expenses

1280.212 Budget and expenses.
1280.213 Investment of funds.
1280.214 Refund escrow accounts.
1280.215 Refunds.
1280.216 Procedures for obtaining a refund.

Assessments

1280.217 Lamb purchases.
1280.218 Exporter.
1280.219 First handlers.
1280.220 Collections.
1280.221 Prohibition on use of funds.

Reports, Books, and Records

1280.222 Books and records of board.
1280.223 Reports.
1280.224 Periodic evaluation.
1280.225 Books and records of persons.
1280.226 Use of information.
1280.227 Confidentiality.

Miscellaneous

1280.228 Right of the Secretary.
1280.229 Personal liability.
1280.230 Separability.
1280.231 Patents, copyrights, inventions, product formulations, and publications.
1280.232 Amendments.
1280.233 Referenda.
1280.234 Suspension or termination.
1280.235 Proceedings after termination.
1280.236 Effect of termination or amendment.
1280.237 Rules and regulations.
1280.238 OMB Control numbers.

Subparts B–E—[Reserved]

Authority: 7 U.S.C. 7411–7425.

Subpart A—Lamb Promotion, Research, and Information Order

Definitions

§ 1280.101 Act.

Act means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425; Pub. L. 104–127; 110 Stat. 1029, as amended), or any amendments thereto.

§ 1280.102 Board.

Board means the Lamb Promotion, Research, and Information Board established pursuant to § 1280.201.

§ 1280.103 Certified organization.

Certified organization means any organization which has been certified by the Secretary pursuant to this part as being eligible to submit nominations for membership on the Board.

§ 1280.104 Conflict of Interest.

Conflict of interest means a situation in which a member or employee of a board has a direct or indirect financial interest in a person that performs a service for, or enters into a contract with, a board for anything of economic value.

§ 1280.105 Department.

Department means the United States Department of Agriculture.

§ 1280.106 Exporter.

Exporter means any person who exports domestic live lambs from the United States.

§ 1280.107 Feeder.

Feeder means any person who acquires ownership of lambs and feeds such lambs in the U.S. until they reach slaughter weight.

§ 1280.108 First handler.

First handler means the packer or other person who buys or takes possession of lambs from a producer or feeder for slaughter, including custom

slaughter. If a producer or feeder markets lamb products directly to consumers, the producer or feeder shall be considered to be a first handler with respect to such lambs produced by the producer or feeder.

§ 1280.109 Fiscal period and marketing year.

Fiscal period and marketing year means the 12-month period ending on December 31 or such other consecutive 12-month period as shall be recommended by the Board and approved by the Secretary.

§ 1280.110 Information.

Information means information and programs that are designed to increase efficiency in producing lambs, to maintain and expand existing markets, and to develop new markets, marketing strategies, increased market efficiency, and activities that are designed to enhance the image of lamb and lamb products on a national or international basis. These include:

(a) Consumer information, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, and nutritional attributes of lamb and lamb products; and

(b) Industry information, which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the lamb industry, and activities to enhance the image of lamb.

§ 1280.111 Lamb.

Lamb means ovine animals of any age, including ewes and rams.

§ 1280.112 Lamb products.

Lamb products means products produced in whole or in part from lamb, including pelts, and excluding wool and wool products.

§ 1280.113 Order.

Order means an order issued by the Secretary under § 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

§ 1280.114 Part and subpart.

Part means the Lamb Promotion, Research, and Information Order and all rules and regulations issued pursuant to the Act and the Order. The Order shall be a *subpart* of the Part.

§ 1280.115 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1280.116 Producer.

Producer means any person who owns and produces lambs in the United States for sale.

§ 1280.117 Producer information.

Producer information means activities designed to provide producers, feeders, and first handlers with information relating to production or marketing efficiencies, development of new markets, program activities, or other information that would facilitate an increase in the demand for lambs or lamb products.

§ 1280.118 Promotion.

Promotion means any action, including paid advertising and the dissemination of culinary and nutritional information and public relations with emphasis on new marketing strategies, to present a favorable image of U.S. lamb products to the public for the purpose of improving the competitive position of U.S. lamb and lamb products in the marketplace and to stimulate sales.

§ 1280.119 Referendum.

Referendum means a referendum to be conducted by the Secretary pursuant to the Act whereby producers, feeders, first handlers, and exporters shall be given the opportunity to vote to determine whether the continuance of this subpart is favored by a majority of eligible persons voting and a majority of volume voting.

§ 1280.120 Research.

Research means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of lamb or lamb products.

§ 1280.121 Secretary.

Secretary means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1280.122 Seedstock producer.

Seedstock producer means any lamb producer in the U.S. who engages in the production and sale of breeding replacement lambs or semen or embryos.

§ 1280.123 State.

State means each of the 50 States and the District of Columbia.

§ 1280.124 Suspend.

Suspend means to issue a rule under § 553 of title 5, U.S.C., to temporarily prevent the operation of an order or part thereof during a particular period of time specified in the rule.

§ 1280.125 Terminate.

Terminate means to issue a rule under § 553 of title 5, U.S.C., to cancel permanently the operation of an order or part thereof beginning on a date certain specified in the rule.

§ 1280.126 Unit.

Unit means each State, group of States, or class designation (producers, feeders, first handlers, or seedstock producers) that is represented on the Board.

§ 1280.127 United States.

United States means collectively the 50 States and the District of Columbia.

§ 1280.128 Wool.

Wool means fiber from the fleece of a lamb.

§ 1280.129 Wool products.

Wool products means products produced, in whole or in part, from wool and products containing wool fiber, excluding pelts.

Lamb Promotion, Research, and Information Board

§ 1280.201 Establishment and membership.

(a) There is hereby established a Lamb Promotion, Research and Information Board of 13 members. Members of the Board shall be appointed by the Secretary from nominations submitted in accordance with this subpart. The seats shall be apportioned as follows:

(1) *Producers.* There shall be six producer representatives on the Board appointed by the Secretary from nominations submitted pursuant to this subpart. For purposes of nominating and appointing producers to the Board, the United States as defined within this subpart shall be divided into two regions. Each region must be represented by at least two producers. The Secretary will appoint the remaining two producers to ensure that the criteria specified in paragraphs (a)(1)(i), (ii), and (iii) of this section are met. Region 1 shall include the geographic area east of the Mississippi River, which includes the following States: Maine, New Hampshire, Vermont, New York, Massachusetts, Connecticut, Pennsylvania, Rhode Island, New Jersey, Delaware, Maryland, District of Columbia, Virginia, West Virginia, North Carolina, South

Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, Kentucky, Ohio, Indiana, Michigan, Illinois and Wisconsin. Region 2 shall consist of all States west of the Mississippi River, which includes the following states: Minnesota, Iowa, Missouri, Arkansas, Louisiana, Texas, Oklahoma, Kansas, Nebraska, North Dakota, South Dakota, Montana, Wyoming, Colorado, New Mexico, Arizona, Utah, Idaho, Washington, Oregon, Nevada, California, Hawaii and Alaska. With regard to appointments to the Board, the Secretary shall ensure that the representation for producers on the Board shall meet the following criteria:

(i) Two producers appointed to the Board shall own annually 100 or less head of lambs;

(ii) One producer shall own annually between 101 and 500 head of lambs; and

(iii) Three producers shall own more than 500 head of lambs annually.

(2) *Feeders.* There shall be three feeder representatives on the Board appointed by the Secretary from nominations submitted pursuant to this subpart. The Secretary will appoint two feeder representatives to ensure that the criteria in paragraphs (a)(2)(i), (ii) and (iii) of this section are met. The third feeder representative will be appointed by the Secretary and will not be chosen or bound by size requirements.

(i) At least one of the feeders appointed to the Board shall feed less than 5,000 head of lambs annually.

(ii) At least one of the feeders appointed to the Board shall feed 5,000 or more head of lambs annually.

(iii) The Secretary shall ensure that the feeders appointed to the Board are not all located in one geographic region as established for producers pursuant to paragraph (a)(1) of this section.

(3) *First handlers.* There shall be three first handler representatives appointed to the Board by the Secretary from nominations submitted pursuant to this subpart.

(4) *Seedstock producers.* There shall be one seedstock producer appointed to the Board by the Secretary from nominations submitted pursuant to this subpart.

(b) In soliciting nominations for the Board, the Secretary will request those nominating to identify specific categories in which nominees will qualify.

(c) *Adjustment of membership.* At least once every 5 years, the Board will review the geographical distribution of the United States production of lambs. The review will be conducted using the National Agricultural Statistics Service inventory figures and the Board's annual assessment receipts. If warranted, the Board will recommend to the Secretary that the membership on the Board be adjusted to reflect changes in geographical distribution of domestic lamb production.

§ 1280.202 Nominations.

All nominations authorized under this section shall be made in the following manner:

(a) Nominations shall be obtained by the Secretary from eligible organizations certified under § 1280.206. Certified eligible organizations representing producers, feeders, first handlers, or seedstock producers shall submit to the Secretary at least two nominees for each seat on the Board. If the Secretary determines that a unit is not represented by a certified eligible organization, then the Secretary may solicit nominations from other organizations or other persons residing in the unit.

(b) After the establishment of the initial Board, the Department shall announce when a vacancy does or will exist. Nomination for subsequent Board members shall be submitted to the Secretary not less than 60 days prior to the expiration of the terms of the members whose terms are expiring, in the manner as described in this section. In the case of vacancies due to reasons other than the expiration of a term of office, successor Board members shall be appointed pursuant to § 1280.205.

(c) When there is more than one certified eligible organization representing the unit or when the Secretary solicits nominations from organizations and persons residing in that unit, they may caucus and jointly nominate, two qualified persons for each position representing that unit on the Board for which a member is to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held, each eligible organization may submit to the Secretary two nominees for each appointment to be made to represent that unit.

§ 1280.203 Nominee's agreement to serve.

Any producer, feeder, first handler, or seedstock producer nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

(a) Serve on the Board if appointed;

(b) Disclose any relationship with any lamb promotion entity or with any organization that has or is being considered for a contractual relationship with the Board; and

(c) Withdraw from participation in deliberations, decision-making, or voting on matters that concern the relationship disclosed under paragraph (b) of this section.

§ 1280.204 Appointment.

From the nominations made pursuant to § 1280.202, the Secretary shall appoint the members of the Board on the basis of representation provided in § 1280.201.

§ 1280.205 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall appoint a successor from the most recent list of nominations for the position or the Secretary shall request nominations for a successor pursuant to § 1280.202 and such successor shall be appointed pursuant to § 1280.204.

§ 1280.206 Certification of organizations.

(a) *In General.* The eligibility of State, regional, or national organizations to represent producers, seedstock producers, feeders, and first handlers and to participate in the making of nominations under this subpart shall be certified by the Secretary. The Secretary shall certify any organization that the Secretary determines meets the eligibility criteria established under paragraphs (b) and (c) of this section. An eligibility determination by the Secretary shall be final.

(b) *Basis for Certification.* Certification shall be based upon, in addition to other available information, a factual report submitted by the organization that shall contain information considered relevant and specified by the Secretary, including:

(1) The geographic territory covered by the active membership of the organization;

(2) The nature and size of the active membership of the organization, including the number of active producers, seedstock producers, feeders, or first handlers represented by the organization;

(3) Evidence of stability and permanency of the organization;

(4) Sources from which the operating funds of the organization are derived;

(5) The functions of the organization; and

(6) The ability and willingness of the organization to further the purpose and objectives of the Act.

(c) *Primary Considerations.* The primary considerations in determining the eligibility of an organization under this paragraph shall be whether:

(1) The membership of the organization consists primarily of producers, seedstock producers, feeders, or first handlers who market or handle

a substantial quantity of lamb or lamb products; and

(2) A primary purpose of the organization is in the production or marketing of lamb or lamb products.

§ 1280.207 Term of office.

(a) The members of the Board shall serve for a term of 3 years, except that the members appointed to the initial Board shall serve proportionately for terms of 1-year, 2-years, and 3-years.

(b) No member may serve more than two consecutive 3-year terms.

(c) Each member shall continue to serve until a successor is appointed by the Secretary and has accepted the position.

§ 1280.208 Compensation.

Board members shall serve without compensation, but shall be reimbursed for their reasonable expenses incurred in performing their duties as members of the Board.

§ 1280.209 Removal.

If the Secretary determines that any person appointed under this part fails or refuses to perform his or her duties properly or engages in acts of dishonesty or willful misconduct, the Secretary shall remove the person from office. A person appointed under this part or any employee of the Board may be removed by the Secretary if the Secretary determines that the person's continued service would be detrimental to the purposes of the Act.

§ 1280.210 Powers and duties of the Board.

The Board shall have the following powers and duties:

(a) To administer this subpart in accordance with its terms and provisions;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet not less than annually, organize, and select from among the members of the Board a Chairperson, Vice Chairperson, Secretary/Treasurer, other officers, and committees and subcommittees, as the Board determines to be appropriate;

(d) To prepare and submit for the approval of the Secretary, fiscal year budgets in accordance with § 1280.212.

(e) To employ persons, other than the members, as the Board considers necessary to assist the Board in carrying out its duties, and to determine the compensation and specify the duties of the persons;

(f) To develop and submit plans and projects to the Secretary for the Secretary's approval, and to enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for the development and carrying out of programs or projects of research, information (including producer information), or promotion, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that any person who enters into a contract or agreement with the Board shall develop and submit to the Board a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the Board of activities conducted under the contract or agreement; and make such other reports available as the Board or the Secretary considers relevant. Any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Board may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically; and,

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor.

(g) To receive, investigate, and report to the Secretary complaints of violations of the Order;

(h) To recommend to the Secretary such amendments to the Order as the Board considers appropriate;

(i) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

(j) To cause its books to be audited by a competent auditor at the end of each fiscal year and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary;

(k) To give the Secretary the same notice of meetings of the Board as is given to members in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting of the Board to the Secretary;

(l) To furnish to the Secretary any information or records that the Secretary may request;

(m) To work to achieve an effective, continuous, and coordinated program of promotion, research, and information (including producer information), designed to strengthen the lamb industry's position in the marketplace; maintain and expand existing markets and uses for lamb and lamb products; and to carry out programs, plans, and projects designed to provide maximum benefits to the lamb industry;

(n) To provide not less than annually a report to producers, feeders and first handlers, accounting for the funds expended by the Board, and describing programs implemented under the Act; and to make such report available to the public upon request;

(o) To invest funds in accordance with § 1280.213.

§ 1280.211 Prohibited activities.

The Board may not engage in, and shall prohibit the employees and agents of the lamb industry from engaging in:

(a) Any action that would be a conflict of interest;

(b) Using funds collected under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, other than recommending to the Secretary amendments to the Order; and

(c) Any advertising, including promotion, research, and information activities authorized to be carried out under the order, that may be false or disparaging to another agricultural commodity.

Expenses

§ 1280.212 Budget and expenses.

(a) The Board shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering, this subpart. The budget shall be submitted before the beginning of each fiscal year, and as frequently as may be necessary thereafter.

(b) Subject to this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting funds from one program, plan, or project to another.

(c) The Board is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be

incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(d) With approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for startup costs and capital outlays and are limited to the first year of operation of the Board.

(e) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Such contributions shall be free from any encumbrance by the donor and the Board shall retain complete control of their use.

(f) The Board shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, and supervision of the Order, including all referendum costs in connection with the Order.

(g) The Board may not expend for administration, maintenance, and functioning of the Board in any fiscal year an amount that exceeds 10 percent of the assessments and other income received by the Board for that fiscal year, except for the initial fiscal year. Reimbursements to the Secretary required under paragraph (f) of this section are excluded from this limitation on spending.

§ 1280.213 Investment of funds.

The Board may invest, pending disbursement, funds it receives under this subpart, only in obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a financial institution that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States. Income from any such investment may be used for any purpose for which the invested funds may be used.

§ 1280.214 Refund escrow accounts.

(a) The Board shall establish an interest bearing escrow account with a financial institution which is a member of the Federal Reserve System and will deposit into such account an amount equal to the product obtained by multiplying:

(1) The total amount of assessments collected by the Board during the period beginning on the effective date of the Order and ending on the date the Secretary announces the results of the required referendum; by

(2) Ten percent (10 percent)

(b) The Board shall pay refunds of assessments to eligible persons requesting refunds during the period beginning on the effective date of the Order and ending on the date the Secretary announces the results of the required referendum in the manner specified in paragraph (c) of this section.

(c) If the amount deposited in the escrow account is less than the amount of refunds requested, the Board shall prorate the amount deposited in such account among all eligible persons who request a refund of assessments paid no later than the date the required referendum results are announced by the Secretary.

§ 1280.215 Refunds.

Any producer, seedstock producer, feeder, first handler, or exporter from whom an assessment is collected and remitted to the Board, or who pays an assessment directly to the Board, under authority of the Act and this subpart through the announcement of the results of the required referendum, and who is not in favor of supporting the promotion and research program as provided for in this subpart, shall have the right to receive from the Board a refund of such assessment, or a pro rata share thereof, upon submission of proof satisfactory to the Board that the producer, seedstock producer, feeder, first handler, or exporter paid the assessment for which refund is sought. Any such demand shall be made by such producer, seedstock producer, feeder, first handler, or exporter in accordance with the provisions of this subpart and in a manner consistent with regulations recommended by the Board and prescribed by the Secretary.

§ 1280.216 Procedure for obtaining a refund.

Each producer, seedstock producer, feeder, first handler, or exporter who pays an assessment pursuant to the Act and this subpart during the period beginning on the effective date of the Order and ending on the date the required referendum results are announced may obtain a refund of such assessment only by following the procedures prescribed in this section and any regulations recommended by the Board and prescribed by the Secretary.

(a) *Application form.* A producer, seedstock producer feeder, first handler, or exporter shall obtain a Board-approved refund application form from the Board. Such form may be obtained by written request to the Board and the request shall bear the producer's, seedstock producer's, feeder's, first handler's, or exporter's signature or properly witnessed mark.

(b) *Submission of refund application to Board.* Any producer, seedstock producer, feeder, first handler, or exporter requesting a refund shall submit an application on the prescribed form to the Board within 60 days from the date the assessments were paid by such producer, seedstock producer, feeder, first handler, or exporter but no later than the date the results of the required referendum are announced by the Secretary. The refund application shall show:

(1) The producer's, seedstock producer's, feeder's, first handler's, or exporter's name and address;

(2) Name and address of the person who collected applicant's assessment;

(3) Number of head of lambs, weight of lambs, or its equivalent, on which a refund is requested;

(4) Total amount of refund requested;

(5) Date or inclusive dates on which assessments were paid;

(6) Certification that the producer, seedstock producer, feeder, first handler, or exporter did not collect the assessment from another producer, seedstock producer, feeder, first handler; or exporter or documentation of assessments collected from others; and

(7) The producer's, seedstock producer's, feeder's, first handler's, or exporter's signature or properly witnessed mark.

(c) *Proof of payment of assessments.* The documentation provided pursuant to § 1280.225(b) to the producer, seedstock producer, feeder, first handler, or exporter by the person responsible for collecting an assessment pursuant to this subpart, or a copy thereof, or such other evidence deemed satisfactory to the Board, shall accompany the producer's, seedstock producer's, feeder's, first handler's, or exporter's refund application.

(d) *Payment of refunds.* The Board shall initiate payment of refund requests, or pay a pro rata share thereof, within 90 days of the date the results of the required referendum are released by the Secretary. Refunds shall be paid in a manner consistent with § 1280.214.

Assessments

§ 1280.217 Lamb purchases.

(a) Except as prescribed by regulations approved by the Secretary, each first handler, or exporter making payment to a producer, seedstock producer, or feeder for lambs purchased from such producer, seedstock producer, or feeder shall collect an assessment from the producer, seedstock producer, or feeder. Each producer, seedstock producer, or feeder shall pay such assessment to the first handler or exporter, at the rate of one-half cent ($.005) per pound of live lambs sold.

(b) Except as otherwise specified in this subpart, a person shall not be considered a producer, seedstock producer, or feeder within the meaning of this subpart if;

(1) The person's only share in the proceeds of a sale of lambs is a sales commission, handling fee, or other service fee; or

(2) The person:

(i) Acquired ownership of the lambs to facilitate the transfer of ownership of such lambs from the seller to a third party,

(ii) Resold such lambs no later than 10 days from the date on which the person acquired ownership, and

(iii) Certified, as required by regulations recommended by the Board and prescribed by the Secretary, that the requirements of this provision have been satisfied.

(c) Each person processing or causing to be processed lambs or lamb products of that person's own production and marketing such lambs or lamb products, shall pay an assessment on such lambs or lamb products on the live weight of the lamb at the time of slaughter at the rate established in paragraph (e) of this section. In addition, pursuant to § 1280.108, such individual would be considered a first handler and would be required by § 1280.219 to pay an additional assessment of $.30 per head. As the first handler, the individual must remit the total amount of assessment to the Board.

(d) A person who is a market agency; i.e. commission merchant, auction market, or livestock market in the business of receiving lambs for sale or commission for or on behalf of a producer, seedstock producer, or feeder shall collect an assessment from the producer, seedstock producer, or feeder and shall pass the collected assessments on to the subsequent purchaser pursuant to this subpart and regulations recommended by the Board and prescribed by the Secretary.

(e) *Rate.* Except as otherwise provided, the rate of assessment shall be one-half of a cent ($.005 per pound) per pound on all live lambs sold. The rate of assessment may be raised or lowered no more than twenty-hundredths of a cent ($.002) in any one year. The Board may recommend any change to the Department. Prior to a change in the assessment rate, the Department will provide notice by publishing in the **Federal Register** any proposed changes with interested parties allowed to provide comment.

(f) The collection of assessments pursuant to § 1280.217, § 1280.218, and § 1280.219 shall begin with respect to lambs purchased, or lambs or lamb products marketed on or after the effective date established by the Secretary and shall continue until terminated or suspended by the Secretary.

(g) If the Board is not in place by the date the first assessments are to be collected, the Secretary shall have the authority to receive assessments and invest them on behalf of the Board, and shall pay such assessments and any interest earned to the Board when it is formed. The Secretary shall have the authority to promulgate rules and regulations concerning assessments and the collection of assessments, if the Board is not in place or is otherwise unable to develop such rules and regulations.

(h) Payment remitted pursuant to this subpart shall be in the form of a negotiable instrument made payable to the Board. Such remittances and the reports specified in § 1280.223 and § 1280.225 shall be mailed to the location designated by the Board.

§ 1280.218 Exporter.

Each person exporting live lambs shall remit to the Board an assessment on such lambs at the time of export at the rate established in § 1280.217(e). An exporter directly exporting his or her own lambs shall remit an assessment to the Board at the rate established in § 1280.217(e).

§ 1280.219 First handlers.

Each first handler, in addition to remitting the assessment collected pursuant to § 1280.217, shall pay an assessment equal to thirty cents ($.30) per head of lambs purchased by the first handler for slaughter or slaughtered by such first handler pursuant to a custom slaughter arrangement. The rates of assessment for first handlers shall be increased or decreased proportionately if the assessment paid by producers, seedstock producers, and feeders is increased or decreased. Such assessment shall be remitted with the assessments collected pursuant to § 1280.217.

§ 1280.220 Collections.

(a) Each first handler and each exporter responsible for the collection of assessments under this subpart shall remit assessments to the Board by the 15th day of the month following the month in which the lambs were purchased for slaughter or export, as required by regulations recommended by the Board and prescribed by the Secretary, has provided otherwise; or

(b) If a first handler marketed lambs or lamb products directly to consumers, assessments shall be remitted to the Board by the 15th day of the month following the month in which the lambs or lamb products were marketed, as required by regulations recommended by the Board and prescribed by the Secretary, has provided otherwise.

(c) *Late payment charges.* Any unpaid assessments due to the Board pursuant to § 1280.217 shall be increased 2 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this paragraph, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purposes of this paragraph, any assessment determined at a date later than the date prescribed by this subpart, because of a person's failure to timely submit a report to the Board, shall be considered to have been payable by the date it would have been due if the report had been timely filed. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date actually received by the Board, whichever is earlier.

(d) Persons failing to remit total assessments due in a timely manner may also be subject to actions under Federal debt collection procedures.

§ 1280.221 Prohibition on use of funds.

No funds collected by the Board under this subpart shall be used to undertake any action for the purpose of influencing legislation or governmental action or policy, other than recommending to the Secretary amendments to this subpart. A plan or project conducted pursuant to this title shall not make false or misleading claims on behalf of lamb or lamb products or disparage a competing product.

Reports, Books, and Records

§ 1280.222 Books and Records of Board.

The Board shall:

(a) Maintain such books and records, which shall be made available to the Secretary for inspection and audit, as the Secretary may prescribe,

(b) Prepare and submit to the Secretary, from time to time, such reports as the Secretary may prescribe, and

(c) Account for the receipt and disbursement of all funds entrusted to it. The Board shall cause its books and records to be audited by an independent auditor at the end of each fiscal year, and a report of such audit to be submitted to the Secretary.

§ 1280.223 Reports.

Each first handler required to remit assessments to the Board for live lambs pursuant to § 1280.217, each first handler marketing lamb products of that person's own production, and each exporter of lambs, shall report to the Board information pursuant to regulations recommended by the Board and prescribed by the Secretary. Such information may include but is not limited to the following:

(a) The number of lambs purchased, initially transferred or which, in any other manner, is subject to the collection of assessment, the total weight in pounds, and the dates of such transactions;

(b) The number of lambs exported; the total weight in pounds of lambs exported;

(c) The amount of assessment remitted;

(d) The basis; if necessary, to show why the remittance is less than the total weight in pounds of lamb multiplied by the assessment rate;

(e) The date any assessment was paid.

§ 1280.224 Periodic evaluation.

Pursuant to the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7401), the Board shall, not less often than every 5 years, authorize and fund, from funds otherwise available to the Board, an independent evaluation of the effectiveness of the Order and other programs conducted by the Board. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

§ 1280.225 Books and records of persons.

(a) Each first handler, exporter of lambs, and market agency shall maintain and make available for inspection such books and records as may be required by regulations recommended by the Board and prescribed by the Secretary, including records necessary to verify any required reports. Such records shall be maintained for at least 2 years beyond the fiscal period of their applicability.

(b) Document evidencing payment of assessments. Each person, including first handlers, exporters and market agencies, responsible for collecting an assessment paid pursuant to this subpart is required to give the person from whom the assessment was collected, written evidence of payment of the assessments paid pursuant to this subpart. Such written evidence serving as a receipt shall include, but not be limited to, the following information:

(1) Name and address of the person collecting the assessment.

(2) Name of person who paid assessment.

(3) Number of head of lamb sold.

(4) Total weight in pounds of lamb sold.

(5) Total assessments paid by the producer, seedstock producer, or feeder.

(6) Date of sale.

(7) Such other information as the Board, with the approval of the Secretary, may require.

§ 1280.226 Use of information.

Information from records or reports required pursuant to this subpart shall be made available to the Secretary as is appropriate to the administration or enforcement of the Act, subpart or any regulation issued under the Act. In addition, the Secretary may authorize the use, under this part, of information regarding person paying producers, seedstock producers, feeders, first handlers, or exporters that is accumulated under laws or regulations other than the Act or regulations issued under the Act.

§ 1280.227 Confidentiality.

All information obtained from books, records, or reports under the Act, this subpart, and the regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members, producers, seedstock producers, feeders, exporters, or first handlers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person violating this subpart, together with a statement of the particular provisions of this subpart violated by such person.

Miscellaneous

§ 1280.228 Right of the Secretary.

All fiscal matters, programs, plans, or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1280.229 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

§ 1280.230 Separability.

If any provision of the subpart is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this subpart, or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1280.231 Patents, copyrights, inventions, product formulations, and publications.

(a) Any patents, copyrights, inventions or publications developed through the use of funds collected by the Board under the provisions of this subpart shall be the property of the U.S. Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale leasing, franchising, or other uses of such patents, copyrights, inventions, or publication, inure to the benefit of the Board. Upon termination of this subpart, § 1280.235 shall apply to determine the disposition of all such property.

(b) Should patents, copyrights, inventions or publications be developed through the use of funds collected by the Board under this subpart and funds contributed by another organization or person, ownership and related rights to such patents, copyrights, inventions or

publications shall be determined by agreement between the Board and the party contributing funds towards the development of such patent, copyright, invention or publication in a manner consistent with paragraph (a) of this section.

§ 1280.232 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board or by any interested persons affected by the provisions of the Act, including the Secretary.

§ 1280.233 Referenda.

(a) *Required referendum.* For the purpose of ascertaining whether the persons subject to this part favor the continuation, suspension, or termination of this part, the Secretary shall conduct a referendum among persons subject to assessments under § 1280.217, § 1280.218, and § 1280.219 who, during a representative period determined by the Secretary, have engaged in the production, feeding, handling, or slaughter of lamb; or the exportation of lamb.

(1) *Time for referendum.* The referendum shall be conducted not later than 3 years after assessments first begin under this part.

(2) *Approval of part.* This part may be approved in a referendum by a majority of those persons voting for approval who also represent a majority of the volume of lamb produced, fed, slaughtered, handled, and exported.

(b) *Subsequent referenda.* The Secretary shall conduct a subsequent referendum:

(1) Not later than 7 years after assessments first begin under this part;

(2) At the request of the Board established pursuant to § 1280.201; or

(3) At the request of 10 percent or more of the lamb producers, seedstock producers, feeders, first handlers, and exporters eligible to vote to determine if the persons favor the continuation, suspension, or termination of this part.

(c) *Other referenda.* The Secretary may conduct a referendum at any time to determine whether the continuation, suspension or termination of this part or a provision of this part is favored by lamb producers, seedstock producers, feeders, first handlers, and exporters eligible to vote.

(d) *Costs of referenda.* The Board shall reimburse the Secretary for any expenses incurred by the Secretary to conduct referenda.

(e) *Manner of conducting referenda.* A referendum conducted under this section with respect to this part shall be conducted in the manner determined by the Secretary to be appropriate.

(1) *Voting.* Eligible voters may vote by mail ballot in the referendum or in person if so prescribed by the Secretary.

(2) *Notice.* Not later than 30 days before a referendum is conducted under this section with respect to this part, the Secretary shall notify the eligible voters, in such manner as determined by the Secretary, of the period during which voting in the referendum will occur. The notice shall explain any registration and voting procedures established under this part.

§ 1280.234 Suspension or termination.

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof if the Secretary finds that this part, subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act,

(b) If, as a result of a referendum the Secretary determines that this subpart is not approved, the Secretary shall:

(1) Not later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an orderly manner.

§ 1280.235 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend to the Secretary not more than five of its members to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all funds and property owned, in possession of or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into pursuant to this subpart;

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Secretary may direct; and

(4) Upon the direction of the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the same obligations as imposed upon the Board and the trustees.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligations as imposed upon the Board and the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be returned to the persons who contributed such funds, or paid assessments, or if not practicable, shall be turned over to the Department to be utilized, to the extent practicable, in the interest of continuing one or more of the lamb research or information programs hitherto authorized.

§ 1280.236 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or any regulation issued thereunder, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any such rule or regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or of this subpart or of any rule or regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, the Secretary or of any person, with respect to any such violation.

§ 1280.237 Rules and Regulations.

The Secretary may prescribe such rules and regulations as may be necessary to effectively carry out the provisions of this subpart.

§ 1280.238 OMB Control Numbers.

The control number for the information requirements assigned by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 is 0581–0198, except that the OMB control number for the nominee background form is 0505–0001.

Subparts B–E—[Reserved]

Dated: April 5, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–8770 Filed 4–9–02; 8:45 am]

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Federal Register

Thursday,
April 11, 2002

Part V

Department of the Interior

Bureau of Land Management

43 CFR Parts 3130 and 3160
National Petroleum Reserve-Alaska-Unitization; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3130 and 3160

[WO–310–1310–01 24 1A]

RIN 1004–AD13

National Petroleum Reserve-Alaska-Unitization

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule adds a new subpart to the Bureau of Land Management's (BLM) oil and gas regulations implementing new statutory authority allowing operators to form units in the National Petroleum Reserve-Alaska (NPR–A). Units allow for the sharing of costs and spreading of revenues among several leases, and allow for production to be attributed to committed leases in the unit. The final rule also: allows for waiver, suspension, or reduction of rental or royalty for NPR–A leases; allows for suspension of operations and production for NPR–A leases; amends existing regulatory language to set the primary lease term for an NPR–A lease at 10 years. Current regulations allow 10 years, or a shorter term if it is in the notice of sale; and adds a new subpart to the NPR–A regulations on subsurface storage agreements. Subsurface storage agreements allow operators to store gas in existing geologic structures on Federal lands.

This rule also makes clear that existing suspension and royalty reduction regulations do not apply to the NPR–A.

EFFECTIVE DATE: This final rule is effective June 10, 2002.

FOR FURTHER INFORMATION CONTACT: Richard Watson at (202) 785–6595, or Ian Senio at (202) 452–5049, or write to Director (630), Bureau of Land Management, Room 401 LS, 1849 C Street, NW., Washington, DC 20240.

Persons who use a telecommunications device for the deaf may contact these persons through the Federal Information Relay Service at 1–800–877–8339 between 8:00 a.m. and 4:00 p.m. eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Contents

I. Background
II. Final Rule as Adopted and Response to Comment
III. Procedural Matters

I. Background

Why Is BLM Implementing This Rule?

Part 3130 of 43 Code of Federal Regulations (CFR) contains the regulations that apply to oil and gas leasing in the NPR–A authorized under the Naval Petroleum Reserves Production Act of 1976, as amended (the ''Act''), (42 U.S.C. 6501 *et seq.*). Until this final rule, part 3130 did not contain regulations on unitization, suspensions or waivers of royalty or rental, suspensions of operations and production or subsurface storage of oil and gas. This rule implements amendments to the Act (*see* Pub. L. 105–83) authorizing operational activities, including unitization of leases, suspensions or waivers of royalty or rental, the suspension of operation and production for leases in NPR–A and subsurface storage agreements.

How Does This Rule Change BLM's NPR–A Oil and Gas Regulations?

The final rule applies to operations under Federal oil and gas leases in NPR–A and adds a new subpart allowing the formation of oil and gas units in the NPR–A. Units allow for the sharing of costs and spreading of revenues among several leases, and allow for development from unit leases to occur without regard to lease or property boundaries. The rule also:

(A) Allows for waiver, suspension or reduction of rental or royalty for NPR–A leases and clarifies the rights of native corporations;

(B) Allows for suspension of operations and production for NPR–A leases;

(C) Amends existing regulatory language to set the primary lease term for an NPR–A lease at 10 years. Current regulations allow 10 years or a shorter term if it is in the notice of sale;

(D) Adds a new subpart to the NPR–A regulations on subsurface storage agreements. Subsurface storage agreements allow operators to store gas in existing geologic structures on Federal lands in return for fees; and

(E) Makes it clear that existing suspension and royalty reduction regulations that preceded the enactment of Pub. L. 105–83, no longer apply to the NPR–A.

II. Final Rule as Adopted and Response to Comments

General

BLM proposed this rule in the **Federal Register** on April 26, 2000 (65 FR 24541). As a result of public requests, we extended the comment period on June 26, 2000 (65 FR 39334). The extended comment period closed on August 10, 2000.

As a result of public comments we made several changes to the final rule. We did this by:

(A) Clarifying the effect of suspensions of operations and production on a lease;

(B) Adding a definition of drainage consistent with a previous rule (see 66 FR 1883) and modifying the definitions for ''committed tract,'' ''NPR–A lease,'' and ''producible interval;'

(C) Allowing use of a nonfederal unit agreement if the lands in the proposed unit comprise less than 10 percent of the lands in the unit. BLM will approve commitment in these cases if the unit agreement protects the public interest;

(D) Defining what is ''economically feasible'' for drilling protective wells in drainage situations;

(E) Allowing for delay in meeting the initial or a continuing development obligation if you cannot perform the obligation for reasons beyond your control;

(F) Adding a BLM customer service standard for approving continuing development obligation plans;

(G) Addressing secondary recovery operations in a unit;

(H) Allowing acreage reduction in a participating area;

(I) Allowing participating area expansion based on available data and information rather than basing it solely on drilling and testing new wells; and

(J) Allowing extension of time to demonstrate that BLM should not terminate a participating area if you are prevented from doing so for reasons beyond your control.

Several comments lead us to believe many commenters misunderstand the function of Federal unit agreements and the role BLM plays in approving and administering them. Our main concern in approving and administering Federal units is to ensure that our actions serve in the public interest (*see* 42 U.S.C. 6508). Our interpretation of administering in the public interest includes protecting Federal royalties and natural resources. For instance, we believe that the relations among unit participants are appropriately managed by the participants. Accordingly, we consider those issues to be outside the scope of Federal concern. These issues should be addressed in the context of secondary or third party agreements or unit operating agreements. Other issues that are outside the scope of Federal concerns include royalty or payment issues between or among working interest owners, and issues between nonfederal lessees and between nonfederal lessees and the operator.

Under an approved Federal unit agreement, BLM will look to the unit operator as its contact. Other parties are generally not directly involved in formal negotiations of Federal unit agreements. BLM has found it to be administratively efficient to deal directly with the unit operator, rather than all parties committed to the unit. Concerns between other interest owners and the unit operator may be addressed in third party unit operating agreements to which BLM is not a party. However, BLM welcomes input and additional information from any party with an interest in production or allocations from the unit agreement.

Subpart 3130—Oil and Gas Leasing, National Petroleum Reserve—Alaska: General

Section 3130.4–2 sets NPR–A lease terms at 10 years to reflect statutory language at 42 U.S.C. 6508(8). Existing regulations allow lease terms to be less than 10 years if it is in the notice of lease sale. This change was mandated by Congress. This section remains as proposed.

Subpart 3133—Rentals and Royalties

Sections 3133.3 and 3133.4 provide for waiver, suspension, or reduction of rental, royalty, or minimum royalty for NPR–A leases if it encourages the greatest ultimate recovery of oil and gas or it is in the interest of conservation. BLM requires applicants to demonstrate that they can't operate their lease under its terms without a waiver, suspension, or reduction of rental, royalty, or minimum royalty. BLM also requires applicants to submit certain items in their application so BLM can determine if the applicant meets the standards of the regulations. We received no comments on these sections. However, we added a new paragraph (b) to section 3133.3 to recognize situations where an Alaska Native regional corporation holds the subsurface estate of leased lands which have been conveyed to an Alaska Native village corporation pursuant to 43 U.S.C. 1613. Under this new paragraph, BLM would consult with the regional corporation before taking an action under this section affecting leased lands in which the subsurface estate is held by the regional corporation. This new provision conforms this section with existing regulations at 43 CFR 2650.4–3 and with the statutory provision at 43 U.S.C. 1613 (g). We also amended paragraphs (b)(1) and (b)(2) of section 3133.4 to make it clear that we are requiring the signature of record title holders of the lease on an application for waiver, suspension or reduction of rental, royalty or minimum royalty.

Subpart 3135—Transfers, Extensions, Consolidations and Suspensions

The suspension of operations and production in this subpart should be distinguished from the suspensions of rental, royalty, or minimum royalty in subpart 3133. Those latter suspensions relate to payments only and do not relate to suspensions of operations and production.

Section 3135.2 describes the circumstances under which BLM will require or approve a request for a suspension of operations and production on an NPR–A lease. This section differs from the proposal in that it allows BLM to require a suspension of operations. We made this change in the final rule because the statute (*see* section 10 of 42 U.S.C. 6508) authorizes BLM to ''direct or assent to the suspension of operations or production.'' We also amended paragraph (b) of this section to make it clear that the suspension pertains to operations and production on the lease. We also replaced the phrase ''those obligations'' with ''your lease requirements'' to more accurately describe the requirement. BLM will require or approve suspensions of operations and production if you are prevented from operating your lease for reasons beyond your control, and the suspension:

(A) Is in the interest of conservation of natural resources. This includes conservation of oil and gas as well as other NPR–A resources;

(B) Encourages the greatest ultimate recovery of oil and gas, such as by encouraging the planning and construction of a transportation system to a new area of discovery; or

(C) Mitigates reasonably foreseeable and significantly adverse effects on surface resources.

The suspension stops the running of the lease term and during the period of the suspension you:

(A) Are not required to pay rental or royalty; and

(B) Do not have beneficial use of and may not operate on your lease.

Examples of reasons that BLM might require or grant a suspension could be those related to protection of natural habitat and wildlife, and protection of subsistence needs of rural residents.

In the final rule we also require the operator to continue to perform necessary maintenance and safety activities on the lease during the period of the suspension. This is consistent with existing policy and practice of BLM field offices.

One commenter encouraged BLM to work with the operator to ensure that issues such as environmental protection and subsistence issues related to granting a suspension are addressed prior to operations commencing. BLM is committed to addressing environmental and subsistence issues prior to any development. However, there may be unanticipated issues, such as undiscovered archaeological finds or endangered species, that may not be evident prior to operations commencing. In these cases, BLM would, of course, work with the operator to address the concerns in a manner that attempts to mitigate impacts to operators while still protecting Federal resources.

Section 3135.3 provides the suspension application requirements. BLM requires the listed items to determine whether you qualify for a lease suspension. We received no comment on this section, but we amended it by replacing ''owners'' with ''holders'' wherever it appeared. We did this to be consistent with BLM terminology and the rest of this rule.

Sections 3135.4 describes the effective date of the suspension. We received no comments on this section. The final rule is slightly different from the proposal in that we made changes to agree with the changes to section 3135.2, explained above.

Section 3135.5 explains when you should stop paying rental or royalty. This section is different from the proposal in that it corrects a logical flaw in what we proposed. Under the proposed rule, the suspension could be the first day of the month in which you file an application for suspension and you would stop paying rental or royalty on the first day of the month following our approval of the suspension. This would have put lessees in the position of having to pay rental or royalty for one full month after the effective date of the suspension. The final rule corrects this by allowing you to stop paying rental or royalty on the first day of the month the suspension is effective. The final rule also explains that if there is any production sold or removed during that final month, you must pay royalty on it.

Sections 3135.6 states that BLM will terminate suspensions when you begin any operations on your lease, or when BLM determines that the reason for granting the suspension no longer exists. You must notify BLM at least 24 hours before starting operations on a suspended lease. We received no comment on this section. However, we amended paragraph (a)(1) of this section to make it clear that the operator does not have unilateral authority to resume

operations or production and must have BLM approval before doing so.

Section 3135.7 lays out the effect that a suspension of operations and production has on the term of your lease. This section is different than what we proposed. The final rule breaks up the effect a suspension has on a lease into two categories and explains that:

(A) For leases in their primary term, the suspension stops the running of the primary term for the period of the suspension; and

(B) For leases in their extended term, the suspension holds your lease in its extended term for the period of suspension as if it were in production. In this case, the lease will not terminate for failure to produce.

These changes more accurately describe the effects of a suspension on lease terms.

We also moved the explanation of the impact a suspension has on rental and royalty into a new section 3135.8.

Section 3135.8 is a new section to the final rule. It explains in more detail than the proposed rule when you must next pay advance annual rental, royalty or minimum royalty and includes an example. It also explains that if you remove or sell any production from the lease during the term of the suspension, you must pay royalty on that production.

Subpart 3137—Unitization Agreements, National Petroleum Reserve—Alaska

Section 3137.5 contains a definitions section that includes the terms you need to know to understand this subpart.

This section introduces two terms, *constructive drilling* and *constructive reworking operations,* that are unique to the NPR–A and have no parallel in the regulations affecting Federal lands outside of NPR–A. These terms are important for the extension provisions of sections 3137.111 and 3137.112 and allow BLM to grant you an extension of a lease in a unit if you demonstrate that there are ongoing constructive drilling or reworking operations in the unit. Since oil and gas operations are difficult and expensive in the NPR–A, we believe that it is reasonable for constructive drilling or reworking operations to extend your lease.

The definition of the term *operating rights* is the same as the definition of working interest: It means any interest you hold that allows you to explore for, develop, or produce oil and gas. The use of this term instead of the term ''working interest'' is adopted here to be consistent with current regulations that apply to Federal lands outside of NPR–A (*see* 43 CFR 3100.0–5 and 3160.0–6).

Several commenters thought that we should use the term ''working interest'' instead of the term ''operating rights.'' Commenters said that ''working interest'' is a more universally used term and that it is a term used by the State of Alaska. ''Working interest'' means the same thing as ''operating rights.'' Because we use the term ''operating rights'' for Federal lands outside of NPR–A, we use that term in this final rule.

Several commenters suggested that we add definitions for the terms ''multiple unit owners'' and ''other fee owners.'' We did not add these terms. Those terms are not necessary for BLM to administer NPR–A units. Issues having to do with multiple owner units and other fee owners may be dealt with in unit operating agreements to which BLM is not a party. We recognize that there may be several different land owners whose land is committed to an NPR–A unit. However, we do not believe it is necessary to add those terms in order to administer NPR–A units.

Committed Tract

Two commenters suggested that we amend the definition of committed tract to make it clear that neither the State of Alaska nor the Arctic Slope Regional Corporation (ASRC) should be responsible for unit operations. We agree that the proposed definition was not clear. We did not intend that either Alaska or ASRC be responsible for unit operations. In the final rule, we amended the definition, to the extent it is applicable to State leases or private lands, by replacing the word ''owners'' with ''oil and gas lessees.'' This change makes it clear that the oil and gas lessees and operating rights owners would agree to unit agreement terms and conditions and to accept responsibility for unit operations. We also eliminated the phrase ''and agreed to accept responsibility for unit operations'' from paragraphs (1) and (2), since that language has nothing to do with whether or not a tract is committed to a unit agreement.

Another commenter suggested that we amend the term ''committed tract'' by replacing ''Federal lease'' with ''NPR–A lease'' in the first paragraph. We didn't make this change. There are circumstances where it would be possible for a Federal lease outside of NPR–A issued under the Mineral Leasing Act to be committed to an NPR–A unit agreement.

One commenter suggested that we amend the definition by introducing the concept of ''other fee owner'' as someone who could commit their lands to an NPR–A unit. We believe other fee owners are already covered in the definition under ''private parcel of land'' and therefore it would be redundant and possibly confusing to amend the definition as suggested.

Finally, we amended the definition by adding the phrase ''or the owners of unleased minerals'' to paragraph (2), to make it clear that we are not precluding owners of unleased minerals from committing to a unit.

NPR–A Lease

Several commenters suggested that we amend the definition to make it clear that leases issued by the Federal Government that are subsequently selected by ASRC are not NPR–A leases. We agree and amended the definition by adding the phrase ''and administered'' to make it clear that NPR–A leases are only those leases the Federal Government issues and administers.

Participating Area

One commenter suggested we amend the definition of the term to say ''those committed tracts or portions of committed tracts within the unit area that meet the productivity criteria for inclusion in a participating area (PA) specified in the unit agreement.'' We did not adopt the commenter's language in the final rule. PAs will consist of all acreage around a well that a unit operator can reasonably prove productive. When we approve the creation of a PA, we will consider all information available at the time; however, we will not approve a PA without at least one well that meets the productivity criteria.

One commenter suggested that we revise the definition by saying that the PA includes committed tracts within the unit area that contain a well meeting the productivity criteria and those committed tracts or portions of the committed tracts that meet the productivity criteria. We did not make this change in the final rule. We believe that the proposed definition, along with sections 3137.80 through 3137.92, make it clear that the PA will include all lands that meet the productivity criteria.

Producible Interval

One commenter suggested that we amend the definition by saying that the pool, deposit, zone or portion thereof ''is capable of meeting the productivity criteria.'' We disagree. There may be producible intervals within the boundaries of the unit agreement area that do not meet the productivity criteria. We did make editorial changes to this definition to clarify its meaning.

Record Title

One commenter suggested that we amend the definition of the term by adding ''or in the records in which such lease is authorized to be recorded under the law of the State of Alaska.'' We did not adopt the commenter's suggestion. We agree that an NPR–A unit may include land in State of Alaska or ASRC oil and gas leases. However, we do not agree that these regulations should be concerned with record title of Alaska or ASRC leases. We are not responsible for insuring that a lessee is granted record title to an Alaska or ASRC lease, nor would we directly administer those leases for any reason outside of the terms of the Federal unit agreement. Therefore, we believe it inappropriate for the definition to include record title of Alaska or ASRC leases.

Unit Agreement, Unit Area

One commenter suggested that we amend the definition of these two terms to deal with leases owned by the State of Alaska or ASRC. We did not adopt the comment. BLM will not address issues having to do with multiple owner units and other fee owners. Those issues may be dealt with in unit operating agreements to which BLM is not a party. We recognize that there may be several different land owners whose lands are committed to an NPR–A unit. However, we do not believe it is necessary to amend these definitions as the commenter suggested.

General

Section 3137.10 explains the benefits to entering into a unitization agreement in NPR–A. One of the major benefits of unitization is that operations or production from one part of the unit meet the development obligations for all Federal leases committed to the unit. You receive the benefits of operations or production, even if the operations are not on, or the production does not occur from, your lease. We give identical benefits to all the Federal tracts in the unit for extensions and wells that meet the productivity requirements laid out in the agreement. As long as one well in the unit has met the productivity criteria, all Federal leases in the unit are extended. Another benefit of unitization is that operations may occur in the unit without regard to restrictions such as spacing requirements and lease offsets. For example, if there were a 200-foot limit to drilling next to a lease boundary, it would not apply among unitized tracts and you would be able to ignore those offsets between unitized tracts and drill within the 200-foot limit. Finally, since unit operator(s) are responsible for operations for all unitized tracts, lessees benefit by being able to consolidate operations and reporting requirements. With the exception of minor editorial changes to paragraphs (a) and (b) of the final rule, it remains as proposed.

Application

Section 3137.15 This is a new section that explains that if the Federal lands in a proposed unit agreement constitute less than 10 percent of the lands in the unit:

(A) You may use a unit agreement approved by the State and/or a native corporation;

(B) BLM will authorize commitment of the Federal lands to the unit, if BLM determines that the unit agreement protects the public interest; and

(C) Operators may request that BLM approve and administer the unit. If we agreed, you would be required to follow, and we would administer, this final rule and existing 43 CFR part 3160—Onshore Oil and Gas Operations.

We added this section as a result of a comment on section 3137.21. Also, this section is similar to existing regulations in section 3181.1, that apply to Federal lands outside of NPR–A.

Sections 3137.20 provides that BLM will accept any format of the unit agreement as long as it protects the public interest and includes the mandatory terms required by these regulations.

In the proposed rule we asked for comment on whether or not the model unit agreement in subpart 3186 of existing regulations would be appropriate for use in the NPR–A. We received several comments that said that the model unit agreement form is too inflexible for use in NPR–A. Commenters preferred the proposed rule over the model form since it would allow negotiation of unit terms with BLM, which would result in a unit agreement that would reflect the unique circumstances inherent in the conduct of operations in NPR–A.

Several commenters suggested that we amend this section to require BLM to negotiate unit terms with the unit operator and any other fee owner. We did not adopt these comments. BLM's philosophy in dealing with Federal units has always been that we deal directly with the unit operator. We have been effectively administering units in this manner outside of NPR–A for more than 50 years and we will deal with units in a like manner in the NPR–A as well. We will not be a party to negotiations among or between interest owners other than the unit operator as representative of the unit because we are only concerned with issues that affect the public interest, rather than resolving internal, essentially private, issues among unit participants. We are also concerned about the potential difficulty of BLM attempting to negotiate with multiple potential unit participants. This would take significant resources for BLM and would involve BLM in essentially private party relationships. One of the factors relevant to a successful unit is for the participants to work together and to select and work with the unit operator. Accordingly, other lessees or interest owners should address their private concerns in their leasing instruments or by negotiating unit operating agreements with the unit operator.

One commenter suggested that any regulation that would purport to empower BLM to force the inclusion of ASRC lands in a unit would infringe upon the police powers of the State of Alaska and potentially interfere with constitutionally protected property rights of ASRC. Neither the proposed regulations nor this final rule allow BLM to force unitization of nonfederal lands. BLM has traditionally relied on State procedures for issues addressing control of nonfederal lands and will continue to do so under these regulations.

One commenter suggested that the interest of the unit operator may not be the same interest as a working interest owner, and if the working interest owner is not allowed to participate in unit agreement negotiations with BLM, they believe their interests will not be protected. Issues of concern to working interest owners may be addressed in either unit operating agreements between the working interest owners and the unit operator or in the lease instrument itself.

This final section remains as proposed.

Section 3137.21 introduces the basic terms of a unit agreement. It also cross-references other sections of the regulation whose subject is discussed here. This section contains a provision that allows BLM to request additional supporting documentation after reviewing your initial application.

We amended paragraph (a)(3) of this section to make it clear that the unit agreement should include ''proposed well'' locations. This change recognizes that we are concerned with well locations and not necessarily just PA location and size, and that the final well location may be different from that proposed in the initial unit agreement.

We also made paragraph (a)(5) clearer by stating that you have the choice to

include the optional terms in the unit agreement.

One commenter suggested that we amend paragraph (a)(3) of this section to require a production allocation methodology for each committed tract within the PA. Federal units outside of NPR–A have traditionally allocated production to each committed tract in a PA in the same proportion that such tract's surface acreage in the PA bears to the total acreage in the PA. To be consistent with Federal units outside of NPR–A, this final rule will allocate production in the same manner (*see* section 3137.81(a)). We believe this manner of allocation is reasonable, predictable and protects Federal and other interest owners equally. We suggest you address allocation issues among other interest owners in a unit operating agreement.

One commenter believes that the proposed rule does not allow enough flexibility since the rule deals primarily with four mandatory terms. We believe the rule allows flexibility to address issues outside of the four mandatory terms. Section 3137.50(d) allows other terms in the agreement that will promote the greatest ultimate recovery of oil and gas. Issues that aren't covered under this section may be addressed in third party or unit operating agreements.

One commenter suggested we add the following language to this section:

''Any terms negotiated and agreed upon among you, BLM, any other fee owner, and the applicable owners of oil and gas lease interests (record title and operating rights) with respect to a multiple owner unit dealing with the continuation or termination of oil and gas leases covering land in which the oil and gas is owned by such other fee owner or with exploration, development, production, or operation of such land or allocation of production from a PA including such land, which terms may vary from terms of other sections of this subpart governing NPR–A leases included in the unit.''

We did not adopt this language in the final rule. BLM will only negotiate with the unit operator. We acknowledge that there may be several different land owners in an NPR–A unit. However, as discussed above, interest owners may address issues of nonfederal concern in unit operating agreements.

One commenter suggested that we add language to paragraph (b) stating that BLM may not unilaterally make changes in a proposed agreement without the consent of the other parties to the unit agreement. We agree that BLM will not make unilateral changes to the unit agreement. We will negotiate in good faith the terms of the unit agreement with the unit operator. Issues outside the scope of these regulations may be addressed in a unit operating agreement between interest owners and the operator.

Several commenters suggested that we add a provision addressing situations where the Federal interest in a unit is relatively small (*e.g.,* less than 10 percent). We agree and have added section 3137.15, which is similar to section 3181.1 in existing regulations that apply outside of NPR–A, to address situations where the Federal lands in the unit are less than 10 percent of the lands in the unit.

One commenter asked if the rules were limited to exploratory and primary recovery operations and whether the operator could propose secondary or enhanced recovery operations in the continuing development plan. The proposed rule primarily addresses exploratory or primary recovery operations. However, we amended the final rule in several places (*i.e.,* 3137.81 (b) and (c), and 3137.82(c)) to address secondary recovery issues. BLM would approve a continuing development plan that proposed secondary or enhanced recovery if in support of the plan you had enough geologic or drilling data to show the need for secondary recovery operations.

One commenter asked if they should propose an amendment to the unit agreement or propose a new unit agreement when they plan to perform secondary or enhanced recovery operations. In administering these rules, BLM will deal with unit agreements on a case-by-case basis. You should work with your local BLM office to determine which course of action is most appropriate in your given circumstance.

One commenter suggested that in the final rule we address what happens when there are leases in an NPR–A unit with differing royalty rates. This final rule will not address differing royalty rates. As far as royalty payments are concerned, the Department is primarily concerned with the Federal interest. The rule does not prohibit parties to the agreement from entering into allocation agreements for the nonfederal share.

One commenter suggested that the final rule address NPR–A units that include nonfederal leases. We believe the rule does address units including nonfederal leases. As explained above, Federal unit agreements address different issues than standard State or private unit agreements because our primary concerns are protecting the public interest and conservation of Federal resources. Issues of concern to nonfederal interest owners holders may be addressed in separate unit operating agreements. BLM has historically administered Federal units in this manner outside of NPR–A and will administer units in this manner in NPR–A as well.

One commenter suggested that we allow working interest owners to form voluntary units. We believe that in the absence of a State order forcing nonfederal lessees to join a Federal unit, the units formed under these regulations will be voluntary units.

Section 3137.22 lays out the size and shape requirements for the unit area. Units must be made up of tracts that are contiguous so that unit operations and production can be conducted in an efficient and logical manner. BLM considers this to be the minimum qualification for a tract to be included in a unit area. The unit area must also include at least one NPR–A lease since these regulations generally do not apply if an NPR–A lease were not in the unit. This section also makes it clear that BLM may limit the size and shape of the unit, considering the type, amount and rate of development and production and the location of the oil and gas. BLM will approve reasonable sizes and shapes as long as they comply with the other provisions of this section.

We made one minor editorial change to paragraph (a) of this section by replacing ''Be composed of'' with ''Consist'' so that final paragraph (a)(1) reads:

''Consist of tracts, each of which must be contiguous to at least one other tract in the unit, that are located so that you can perform operations and production in an efficient and logical manner; and''. We believe this wording is clearer than that proposed.

Section 3137.23 describes what you must submit to BLM in your application. This includes a statement that there are sufficient tracts in the agreement to reasonably operate and develop the unit area. This means that BLM expects unit operators to be able to operate the unit area efficiently without the need for participation in unit operations or production by non-committed parties.

Your application must include a discussion of the reasonably foreseeable and significantly adverse effects on the surface resources of the NPR–A. This standard is laid out in paragraph (1) of 42 U.S.C. 6508. This section also requires you to explain how unit operations may reduce impacts compared to individual lease operations. In other words, your unit application must explain how:

(A) Operations under the unit will comply with the environmental, subsistence, archaeological, and

historical preservation requirements under laws or regulations; and

(B) The unit operations' impacts on surface resources would be less than those impacts of lease operations were they to be performed individually.

BLM may also require you to submit additional documentation such as any agreements you may have with persons who have the right to engage in subsistence activities on lands in the unit area, or additional copies of maps, plats and other such exhibits.

We amended paragraph (b) of this section to make it clear that the map this section requires you to submit is of the proposed unit area. This change also recognizes the fact that the final unit may be different from what you proposed in your application.

We also amended paragraph (c)(3) of this section by replacing ''holding'' with ''owning'' in order to be consistent with BLM terminology.

One commenter asked why a discussion of reasonably foreseeable and significantly adverse effects on surface resources of NPR–A is needed at the time of application. BLM requires this information because it is a statutory requirement (*see* 42 U.S.C. 6508(1)). We require this information at the application stage because we need this information as a condition of approval of the unit and to determine the effects of your operations on NPR–A. We realize that you will not have all of the information necessary for a detailed plan of operations at the application stage, but we expect you to address these issues to the extent you can with the information you have available at the time of application.

One commenter asked what constitutes ''sufficient tracts committed to the unit agreement to reasonably operate and develop the unit area'' and if the rule does not address ''involuntary unitization,'' how will an operator achieve effective control. ''Sufficient tracts'' means the committed area necessary for the unit operator to have reasonable control of the unit area. This is generally considered to mean a significant percentage of tracts in the unit area and is determined on a case-by-case basis. For example, outside of NPR–A ''sufficient tracts'' has meant control of as little as 70 percent of the committed area within the unit area. BLM does not have authority to force the unitization of nonfederal tracts. Outside of NPR–A we have traditionally relied on State procedures to deal with resource conservation issues on nonfederal lands and would do the same in NPR–A. Therefore, if an operator did not believe it had effective control of the unit area, it could ask the State of Alaska to intervene.

One commenter asked if the rules contemplate ''all depths'' units or can a unit agreement and development plan be formation or pool specific. Section 3137.28 addresses this directly and makes it clear that NPR–A unit agreements include all oil and gas resources of committed tracts unless we approve unit agreement terms to the contrary.

One commenter said they believe this section means that BLM expects unit operators to operate the unit area efficiently without participation in unit operations or production from noncommitted parties. We believe the commenter is implying that the final rule should provide for forced unitization. As mentioned above, BLM does not have the authority to force the unitization of nonfederal leases. We rely on State procedures for forced unitization of nonfederal lands.

One commenter suggested that the final rule should ''recognize that the existing Northeast National Petroleum Reserve-Alaska Final Integrated Activity Plan/Environmental Impact Statement (FIAP/EIS) concluded that the application of all lease stipulations prescribed by the FIAP/EIS and any additional stipulations added by the BLM authorizing officer, will be sufficient to comply with existing law.'' Another commenter suggested we amend paragraph 3137.23(d)(1) by adding ''recognizing that existing lease stipulations are sufficient to comply with existing law.'' We did not amend the section as suggested. The FIAP/EIS ''describes the future multiple-use management of 4.6 million acres of the NPR–A, consistent with existing statutory direction for its management.'' *See* Record of Decision, Northeast National Petroleum Reserve, Alaska, Integrated Activity Plan/Environmental Impact Statement, Record of Decision Summary, at page v (October 7, 1998). The FIAP/EIS and any stipulations proposed therein were not written to address regulations of general applicability to the entire NPR–A. Future leasing decisions in other portions of the NPR–A will determine what stipulations would be required in light of available information.

One commenter suggested that we amend paragraph (d)(1) by adding ''other fee owners'' to those entities which the regulation would require you to invite to join the unit. We did not make this change. Other fee owners are already included in this paragraph under ''owners of oil and gas lease rights (leased or unleased)'' and it would be redundant to amend this section.

Section 3137.24 lists the reasons BLM will reject a unit agreement application. BLM will reject unit applications that:

(A) Do not contain all of the mandatory terms these regulations require, and any additional terms BLM may require you to include;

(B) Propose a unit operator who has an unsatisfactory record of complying with applicable laws, regulations, the terms of any lease or permit, or the requirements of any notice or order. BLM has determined that only responsible, qualified operators should be allowed to operate units in the NPR–A. Operators with satisfactory records of compliance are more likely to comply with the terms and conditions of leases and these regulations than those who have unsatisfactory records of compliance. BLM will also reject any unit application that proposes an operator who is not qualified, under any statute or regulation, to operate within NPR–A;

(C) Do not conserve natural resources. BLM interprets paragraph (10) of 42 U.S.C. 6508 as establishing this standard. BLM interprets ''in the interest of conservation'' from the statute to mean that the unit agreement must conserve natural resources, including oil and gas and other resources in the area of development;

(D) We determine are not in the public interest. BLM will not approve unit applications that do not protect the resources in an oil and gas pool, field, or similar area;

(E) That do not comply with any special conditions in effect for any part of the NPR–A that would be affected by the unit or any lease subject to the unit. BLM often imposes special conditions, such as stipulations and conditions of approval, to protect surface and subsurface resources; or

(F) Do not comply with the requirements of subpart 3137.

One commenter asked if all the criteria for unit approval are in section 3137.24 and also if the term of the unit agreement will be specified in the approval. Section 3137.24 contains all the approval criteria, including paragraph (f) which requires the unit application to comply with the requirements of the entire subpart. BLM will specify the unit term either in the unit agreement itself or in the approval document.

With the exception of minor editorial changes to paragraphs (e) and (f) of this section, the final rule remains as proposed.

Sections 3137.25 and 3137.26 explain how parties to the unit will know if

BLM approves or disapproves the unit agreement and when unit agreements are effective. BLM will provide notice to unit operators of the action it takes on the unit application. The unit operator must notify in writing all parties to the unit agreement within 30 calendar days of receiving BLM's decision. One important reason for this notification is to advise lessees of when the unit operator may begin acting on their behalf. A unit agreement is effective the date BLM approves it.

We received no comments on these sections and they remain as proposed.

Section 3137.27 explains the effect of subsequent contracts and agreements on the unit agreement. This section explains that private agreements between operators, among lessees, or between the operator(s) and lessees do not affect or modify the terms of the BLM approved unit agreement. Likewise, agreements entered into with any other parties, including lease agreements, do not modify unit terms or conditions. However, the unit agreement does not modify Federal lease stipulations.

We modified this section in the final rule by replacing ''other agreement'' with ''subsequent contract or obligation'' to make it clear that the unit agreement cannot affect existing agreements and because we believe that the new phrase better describes existing policy. We received no comments on this section, and other than the changes mentioned above, the rule remains as proposed.

Section 3137.28 requires a unit agreement to include all oil and gas resources of committed tracts unless BLM approves agreement terms to the contrary. We received no comments on this section. However, we added a cross reference to section 3137.50, which has to do with optional unit agreement terms.

Development

Section 3137.40 explains that you must define initial development obligations in a unit agreement. You and BLM will negotiate the details of these terms before you submit a final application.

Initial development obligations must be such that when you complete them, you will be able to estimate the size and shape of the reservoir within the unit area and understand the geologic conditions existing within the reservoir and unit area. You must complete initial development obligations before beginning continuing development obligations.

We amended paragraph (a) of this section to make clear that as part of the initial development obligations you must define the number of wells you *anticipate* will be necessary to assess the reservoir adequately. The proposed rule asked you to define ''[t]he number of wells required to assess the reservoir adequately.'' The final rule recognizes that, at the negotiating stages, you may not know with certainty the exact number of wells necessary to assess the reservoir.

One commenter interpreted this section and section 3137.41 to mean that if both parties agree on unit obligations, the obligations will be ''satisfactory to be able to estimate the size and shape of the reservoir within the unit area and to understand its geologic conditions.'' We do not agree.

We don't expect you to drill wells pursuant to unit obligations if new information shows that the reservoir is different than you anticipated. We don't believe one can know everything about an exploratory unit before exploratory work begins and would expect that if subsequent data supports a change in the operating plan, we will consider changes from the originally negotiated plan.

Section 3137.41 explains that you must define continuing development obligations in a unit agreement. You and BLM will negotiate the details of these terms before you submit a final application.

Continuing development obligations should promote development within unit areas. BLM has determined that, as a matter of policy, in exchange for the benefits of unitization, operators must commit to development exceeding that of non-unit development in the area surrounding the unit.

We amended our proposal for this section by adding a cross-reference to section 3137.71 to make it clear to which program of exploration and development we are referring.

One commenter suggested that we amend this section to allow for supplemental or additional plans of development. As stated above, we don't believe one can know everything about an exploratory unit before exploratory work begins and we expect that if data supports a change in the operating plan, we will consider changes from the originally negotiated plan.

Optional Terms

Section 3137.50 describes the optional terms BLM may allow you to include in your unit agreement if they promote additional development or enhanced production potential. These include optional terms that:

(A) Limit the unit to certain formations;

(B) Allow multiple unit operators; or

(C) Allow modifications of the unit agreement terms by less than 100 percent of the parties to the unit.

BLM will also allow other optional terms not listed above if you demonstrate to BLM that they promote the greatest economic recovery of oil and gas.

We didn't receive any comments on this section. However, we made an editorial change to paragraph (c) of this section to make it clear that you may modify the unit agreement with less than 100 percent agreement of the parties to the unit agreement if the agreement allows it.

Section 3137.51 establishes the requirements for multiple unit operators. The unit agreement must explain the conditions under which additional unit operators would be acceptable. For example, a justification for multiple unit operators may be the need for different sets of operations to produce oil and gas with different and distinct characteristics from the same unit. Multiple unit operators may be necessary to have distinct, but not redundant, surface production facilities to handle that production. The unit agreement must also establish the responsibilities of the different operators so that lessees and BLM are informed of who is responsible for what, including bond coverage. You must also define in the unit agreement the consequences if one or more of the unit operators defaults, such as which operator(s) would be responsible for particular operations in case another operator defaults. Finally, the unit agreement must define which unit operator is responsible for unit obligations not specifically assigned in the unit agreement such as the division of responsibilities for different types of operations that might occur within the same unit.

One commenter said that multiple unit operators should be allowed only under very unique circumstances. We did not amend this section as a result of this comment. We believe that this section allows you to negotiate with BLM the conditions under which multiple unit operators will be allowed and does not preclude you from negotiating the limited circumstances under which you believe multiple unit operators are appropriate. The same commenter believed that the unit agreement should specifically outline the responsibilities of the different unit operators in a multiple operator unit. We believe paragraph (b) is worded generally enough to allow you to negotiate very detailed responsibilities of the different unit operators in

multiple operator units. The final rule remains as proposed.

Section 3137.52 sets out the requirements to allow you to modify the unit agreement. You may modify the unit agreement if:

(A) All the current parties (original parties or their successors) agree to the modification; or

(B) You meet the modification provision in the unit agreement. In order to permit you to modify the unit agreement in this manner, the unit agreement must identify which parties, and what percentage of those parties, must consent to each type of modification named in the unit agreement.

Before BLM approves a modification, you must have certified that all necessary parties, as spelled out in the unit agreement, have agreed to the modification. Modifications are effective retroactive to the date you filed a complete modification application. BLM will reject any modification application that does not comply with BLM regulations or applicable law. For example, you would be required to comply with the requirements of this section before changing your initial or continuing development obligations.

In the final rule we restructured paragraph (b). It requires you to include in the application the items listed. To address changes in the allocation schedule as a result of unit modification, the final rule requires you to submit both:

(A) A description of the new allocation methodology; and

(B) The new allocation schedule.

This change recognizes that there may be situations where modification of the unit agreement might change the allocation schedule. It also accounts for situations where the original exploratory unit agreement is modified so that the unit agreement is a secondary recovery unit agreement and, consequently, the allocation schedule changes.

One commenter suggested that we make uniform the unit modification provisions in sections 3137.50 and 3137.52. While the provisions are consistent in their treatment of the issue of modification, we believe the commenter misread the two provisions since they have a different focus. Section 3137.50 addresses optional terms that you may include in the unit agreement, including modification of the unit agreement, whereas section 3137.52 addresses unit modifications. Uniformity of these regulatory provisions would, therefore, not be appropriate given their different purposes. Therefore, we did not adopt the comment.

One commenter suggested that we amend this section to specify which types of modifications would be permitted according to which voting percentage. We did not adopt the comment. We believe parties to the unit agreement should have the flexibility to determine the types of modifications and voting percentages they will allow and set them as terms in the unit agreement itself.

One commenter suggested that we include a clause to specifically address circumstances which are not otherwise specifically addressed in this section. We did not adopt the comment because we believe that the section allows modification as long as you comply with the requirements of the section, including BLM approval of the modification.

Unitization Agreement Operating Requirements

Section 3137.60 describes the unit operator's obligations. Operators must:

(A) Comply with the terms and conditions of the unit agreement, Federal laws and regulations, lease terms and stipulations, and BLM notices and orders; and

(B) Provide evidence of acceptable bonding. The rule provides that the amount of acceptable bonding can be no less than the sum of the individual Federal bonding requirements for each of the Federal leases committed to the unit.

Evidence of acceptable bonding could include:

(A) A list of the bonds, their identification numbers, and their amounts; and

(B) Certification that the bond amounts are sufficient to cover the proposed unit operations.

Operators who do not comply with this section are not eligible to operate an NPR–A unit.

This section requires bonds to be payable to the Secretary of the Interior. This is standard practice for bonding on public lands.

We received no comments on this section and, except for editorial changes, the final rule remains as proposed.

Section 3137.61 describes how BLM will allow a change in the unit operator. If you are the new unit operator of an existing unit, you must file statements that you accept unit obligations and that the required percentage of interest owners as specified in the unit agreement consented to a change of the unit operator. New operators must also file evidence of acceptable bonding. The effective date of the change in the unit operator is the date BLM approves it.

One commenter asked that we amend this section by specifically stating that a former approved unit operator be allowed to assign its existing bond to the new operator after BLM approval. We did not adopt this comment because we do not believe it necessary to regulate the common practice of filing bond riders with BLM for change in the covered party on a bond.

The final rule remains as proposed.

Section 3137.62 lays out your liabilities as a former unit operator. Former unit operators are liable for any duties and obligations that accrued before BLM approved a new unit operator. We received no comments on this section and the final rule remains as proposed.

Section 3137.63 describes your liabilities as the new unit operator. Liability is joint and several with the former unit operator. The new unit operator has joint and several liability with the record title and operating rights owners for:

(A) Compliance with the terms and conditions of the unit agreement, Federal laws and regulations, lease terms and stipulations and BLM notices and orders;

(B) Plugging unplugged wells that were drilled and reclaiming unreclaimed facilities that were installed or used before the effective date of the change in unit operators. This liability is joint and several with the former unit operator; and

(C) Liabilities that accrue during the time you are the unit operator. The new unit operator's liability for payment obligations under the lease, such as royalties and other payments, is limited by section 102(a) of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1712(a).

Section 102(a) of FOGRMA provides that, while a lessee may designate some other person, such as a unit operator, to make payments due to the Government on the lessee's behalf, the designated payor does not thereby become liable to the Government for those payment obligations. A designated payor, such as a unit operator, only has liability to the Government if it is also the owner of the operating rights in a lease or is the record title holder. The statute provides that the operating rights owners are primarily liable to the Government for payment obligations and that holders of record title are secondarily liable if they do not own the operating rights.

Accordingly, the regulation recognizes that a new unit operator's potential liability for the payments due the Government is not automatic, but is

dependent upon whether the operator is an operating rights owner or an holder of record title, in accordance with the limitations contained in Section 102(a) of FOGRMA.

We amended paragraphs (b)(2) and (b)(6) by making it clear that the unit operator's liabilities are for:

(A) Protecting the unit from drainage, not protecting the lease from drainage, as proposed; and

(B) Other requirements related to unit operations, rather than ''operations on the lease,'' as proposed.

We also made a similar change to paragraph (c) by replacing ''lease'' with ''unit.'' The proposed rule did not accurately describe the unit operator's liabilities when it referred to liabilities in terms of ''lease'' liabilities, rather than ''unit'' liabilities.

Section 3137.64 sets out the requirements for preventing drainage or compensating the Federal Government for it. To prevent uncompensated drainage of oil and gas from unit land by wells on land not subject to the unit agreement, you must take such measures as BLM determines are necessary. Permissible means of satisfying this obligation include:

(A) Drilling protective wells that are economically feasible. A protective well is considered economically feasible if it is projected to have production in quantities sufficient to have a reasonable profit above the cost of drilling, completing and producing operations. In the final rule we added a definition of ''economically feasible'' to paragraph (a), using a definition consistent with that in the final drainage rule (see 66 FR 1893);

(B) Paying the Federal Government compensatory royalty for oil or gas lost through drainage from a unit. BLM will determine the amount of compensation that would cover the royalties on oil and gas lost through drainage;

(C) Forming other agreements or modifying existing agreements to allow the tracts in the unit to share in production. BLM will agree to this provision only if we determine that the Federal Government is being fairly compensated for drainage. In the final rule we added language to paragraph (c) to make clear that the share in production does not apply retroactively; or

(D) Any additional measures that BLM considers necessary to prevent uncompensated drainage.

One commenter said that this section was too broad and that drainage protection should be limited to ''such measures as it considers necessary and prudent, based upon available information.'' We did not adopt this comment. We believe that the final rule reflects BLM policy and Federal oil and gas lease terms and conditions and is consistent with the final drainage rule BLM promulgated on January 10, 2001 (66 FR 1883). This final rule is also consistent with how BLM currently addresses drainage in units outside of NPR-A (see paragraph 17(a) of the model unit agreement form in 43 CFR 3186).

One commenter said that the rule failed to address what would happen if an NPR-A unit is drained by development outside NPR-A on either State or ASRC land. We disagree. The rule does address the situation and would require the unit operator to protect the unit from drainage under this section no matter where the offending well is located.

One commenter said we should amend paragraph (a) of this section by defining ''economically feasible'' to mean ''a person's ability to extract a reasonable rate of return on one's investment.'' We did not adopt the comment. As stated in the final drainage rule (66 FR 1893), BLM defines an economically feasible well for drainage purposes as one that produces a sufficient quantity of oil or gas for a reasonable profit above the cost of drilling, completing and operating the protective well. Consistent with existing policy, as stated above, we added this definition of economically feasible to paragraph (a) of this section.

One commenter suggested we amend this section by making clear that it is not feasible to allow tracts committed to a unit agreement to share in production from other tracts on a retroactive basis. We amended paragraph (c) of this section by adding to the end of the paragraph the phrase ''after the effective date of the new or modified agreement.''

One commenter believed that paragraph (c) of this section allows for pooling, but that the language should allow BLM to force pool leases in drainage situations. We did not amend the rule as a result of this comment. BLM does not have the authority to force pool nonfederal leases. We would rely on the other provisions of this section to deal with drainage and in cases where the only remedy would be forced pooling, we would rely on State procedures.

One commenter suggested we delete proposed paragraph (d) and replace it with the following: ''Any additional measures BLM considers reasonably necessary and prudent to prevent uncompensated drainage based on available information.'' The commenter said this change would make it clear that it would ''not be appropriate to require a unit operator to drill an offset well to prevent drainage when all available information indicates that such offset well would not produce in sufficient quantities to enable the unit operator to recover the costs of drilling, completing and operating such well.'' We did not amend paragraph (d) as suggested. However, we believe the changes to paragraph (a), discussed above, address this commenter's concern.

Development Requirements

Sections 3137.70 explains:

(A) The requirements to meet initial development obligations; and

(B) What you must submit to BLM after you meet initial development obligations. To meet initial development obligations by the time you agreed to in your unit agreement, you must have:

(1) Drilled the required test well(s) to the primary target. You should negotiate this term with BLM before you submit to BLM your complete unitization application;

(2) Drilled at least one well that meets the productivity criteria (see the discussion of section 3137.82 for a discussion of productivity criteria); or

(3) Established to BLM's satisfaction that further drilling to meet the productivity criteria is unwarranted or impracticable. BLM will require you to submit information showing that you have adequately drilled to the primary target defined in the unit and tested the results to prove that further drilling is unwarranted or impracticable. This information could include well logs and production test data. If you meet this standard, and BLM agrees that further drilling should not occur, the unit may terminate. Alternatively, if you have a modification provision in your unit agreement, you could submit, for BLM approval, a request to modify the initial development obligations and/or productivity criteria.

You are required to submit to BLM certification that you met initial development obligations within 60 calendar days after having done so.

One commenter suggested that we amend paragraph (a)(2) of this section to allow wells drilled prior to the effective date of the unit agreement that meet the productivity criteria to meet the obligation to drill a well under the unit that meets the productivity criteria. We did not amend this section as suggested. BLM provides incentives (such as lease extensions for all Federal leases in a producing unit) for Federal leases to join units. In exchange for these incentives we expect the unit reservoir to be as fully explored and produced as possible. This obligation includes the

requirement to drill new obligation wells under the unit agreement. Section 9 of the Act says that ''Drilling, production, and well reworking operations performed in accordance with a unit agreement shall be deemed to be performed for the benefit of all lessees that are subject in whole or in part to such unit agreement.'' We interpret this to mean that wells drilled prior to the effective date of the unit are not operations ''performed in accordance with a unit agreement'' and consequently are not performed for the benefit of all lessees. Therefore, wells drilled before the effective date of the unit agreement do not meet the initial development obligations. However, these wells may be included in a unit plan and production from them may subsequently be considered unit production.

One commenter asked if there were not a modification provision (section 3137.52) in the unit agreement, are you precluded from amending the initial or continuing development obligations or the productivity criteria in the unit agreement. Under paragraph 3137.52(a)(1), you may modify the unit agreement without a modification provision in the unit agreement if all current parties to the unit agreement agree to the modification. Under paragraph 3137.52(b) you are required to apply to BLM for approval of any modification to the unit agreement.

One commenter asked if a well is successfully drilled to the primary target depth, but a different formation is encountered than that anticipated, is the initial development obligation still satisfied for the purposes of section 3137.70. BLM would not consider this to be an initial obligation well. However, you would satisfy the requirement under paragraph (a)(3) if you demonstrated to BLM that further drilling to meet the productivity criteria would be unwarranted or impracticable.

This final rule remains as proposed.

Section 3137.71 explains the requirements to meet continuing development obligations and lists what kinds of operations BLM considers to be continuing development (see the discussion of sections 3137.40 and 3137.41). Work you conducted before meeting initial development requirements is not continuing development. You must submit to BLM, within 90 calendar days after meeting initial development obligations, a plan that describes how you will meet continuing development obligations. However, you must submit to BLM updated continuing obligation plans as soon as you determine that, for whatever reason, the plan needs amending. While this is a new provision in the final rule, it merely requires that you update BLM regarding amendment of the plans which you previously submitted. Given that you will have possession of the information necessary to readily comply with this requirement, we believe it is reasonable to require you to provide us updates of your continuing development plans as operating plans change. Finally, we moved proposed paragraph (c) to a new section 3137.74.

One commenter asked that we amend this section to require BLM to ''take action on the continuing development obligation plan within 30 days of receipt, otherwise the plan shall be deemed approved.'' We did not adopt this comment. BLM cannot allow a development plan to be approved without our review, since we must ensure that the public interest is protected. However, in the final rule we added a new section 3137.73 that contains a customer service standard. Please see the discussion of that section for an explanation.

One commenter suggested that we amend this section by adding a sentence to paragraph (c) that would allow extension of the 90 calendar day period for certification of the start of operations due to seasonal work or access limitations. We agree that 90 days may not be enough time to begin continuing development operations in some circumstances. Consequently, we added a new section 3137.72 allowing for an extension of time to meet continuing development obligations if it is necessary for reasons beyond the operator's control.

Section 3137.72 This new section allows for an extension of time to meet the initial or a continuing development obligation if reasons beyond your control keep you from meeting those obligations by the time the unit agreement specifies. In the application for extension you must:

(A) State the obligation for which you are requesting a delay;

(B) List the reasons beyond your control that prevent you from performing the obligation; and

(C) State when you expect the reasons beyond your control to terminate.

BLM will grant an extension of time if we determine that the extension encourages the greatest ultimate recovery of oil or gas or is in the interest of conservation and that reasons beyond your control prevent you from performing the initial or a continuing development obligation. The extension lasts as long as the conditions giving rise to the extension continue to exist.

We added this section because several commenters indicated that in several places in the proposed rule there were obligations that they may not be able to meet timely because of circumstances beyond their control. The language in this section is consistent with existing policy on Federal lands outside of NPR–A.

Section 3137.73 This new section contains a customer service standard that requires BLM, within 30 calendar days of receiving your plan, to notify you in writing that we:

(A) Approved your plan;

(B) Rejected your plan and explain why, including an explanation of how you should correct the plan so that it will be in compliance; or

(C) Have not acted on the plan, explaining the reasons and when you can expect a final response.

We added this section in response to the comment discussed in section 3137.71 above which suggested that BLM's lack of action within 30 days should result in the deemed approval of the plan. We rejected that approach for the reasons discussed above.

Section 3137.74 This new section contains the provisions from previously proposed paragraph 3137.71(c). Under this section, within 90 calendar days after BLM approves your plan, you must certify to BLM in writing that you started operations to fulfill continuing development obligations. BLM may require you to support your certification with documentation and submit periodic reports demonstrating continuing development. Other than renumbering, this section remains as proposed.

Section 3137.75 (proposed section 3137.72) explains that you may conduct additional development within or outside a PA to fulfill continuing development obligations. We received no comments on this section and it remains as proposed.

Section 3137.76 (proposed section 3137.73) explains that a unit contracts if you do not meet a deadline for performing a continuing development obligation. This section also explains contraction and when it is effective. Contraction means that all areas outside any PA will be eliminated from the unit and only established PAs (producing or non-producing, depending on unit terms) remain in the unit. After contraction, any producing wells no longer in the unit produce oil or gas under the terms of the lease or other agreement (e.g., communitization agreement) under which they are operating. If you do not meet a continuing development obligation before a PA is established, the unit

terminates. We didn't receive any comments on this section and, except for renumbering, it remains as proposed.

Participating Areas

General

Several commenters suggested that we amend the regulations to allow for corrective adjustments of allocation of production among tracts in a PA. We agree with the commenters to the extent that a PA is found to be larger or smaller than originally anticipated. We amended sections 3137.84 and 3137.85 and added to the final rule a new section 3137.86 to address PA revisions.

Several commenters suggested that we amend the regulations to permit a production allocation methodology for each PA based on something other than surface acreage. We did not adopt this suggestion. As stated above, BLM is primarily concerned with protecting the public interest and resource conservation. We believe that for exploratory and primary production units, production allocation based on surface acreage is reasonable and appropriate and protects the public interest. This method is easily measurable, verifiable and understandable. The rule, however, does not prohibit parties to the agreement from entering into allocation agreements for the nonfederal share.

One commenter suggested that basing allocation on surface acreage could be an unconstitutional taking of property rights of a royalty owner. We disagree. Nothing in these regulations compels royalty owners to commit their interest to the unit agreement. Therefore, under these regulations there is no taking of a royalty owner's property under any circumstance. Allocation based on surface acreage is the only participation parameter that has any degree of certainty with respect to an exploratory unit. Allocation based on reservoir parameters is not possible until the reservoir has been discovered and fully delineated. Using surface acreage as an allocation methodology enables all royalty interest owners to have a common understanding and expectation as to how allocation of royalties will occur. Allocation based on evolving reservoir parameters would subject interest owners to uncertainty and would be unreasonably difficult to administer. Under the final rule, all interest owners, including the Federal Government, share in the risk associated with basing allocations on surface acreage.

One commenter suggested that we amend the regulations to allow revisions of previous allocations and royalty payments. We did not adopt the comment. Similar to the discussion above, reallocation based on evolving reservoir data, or other factors, would be impracticable to administer.

One commenter suggested that the rules should be flexible enough to allow for establishing or expanding PAs based on available geological, geophysical and engineering information. We agree and believe the final rule is flexible enough to allow what the commenter suggests. However, we will not allow establishment of a PA absent a well that meets the productivity criteria.

Sections 3137.80 defines PAs and how they relate to the unit agreement. Whether an area surrounding a well becomes a PA depends on whether the well within the unit area meets the productivity criteria set out in the unit agreement. You must include the proposed PA size in the unit agreement for planning purposes and to aid in the mitigation of reasonably foreseeable and significantly adverse effects on NPR–A surface resources. Since the proposed PA facilitates the analysis of where operations and surface impacts are likely to occur, we believe the size and location of PAs should be anticipated at unit formation to assist BLM to meet the statutory standard ''to mitigate reasonably foreseeable and significantly adverse effects on the surface resources of the National Petroleum Reserve in Alaska.'' (*see* paragraph (1) of 42 U.S.C. 6508). This section also requires you to delineate a PA at the time it meets the productivity criteria defined in section 3137.82.

This section remains as proposed.

Section 3137.81 describes the function of a PA and how BLM determines production allocation. The function of a PA is to allocate production to each committed tract that is within or partially within the PA according to that tract's surface acreage within the PA.

The final rule explains that for exploratory and primary recovery operations, we will consider gas cycling and pressure maintenance when establishing PA boundaries. It also explains that for secondary and tertiary recovery operations, we will consider all wells that contribute to production when establishing PA boundaries. BLM will not consider disposal wells when setting PA boundaries since those wells do not contribute to production and therefore should not receive a production allocation. These provisions are new to the final rule. They are consistent with how BLM sets PA boundaries on Federal lands outside of NPR–A.

Also, we distinguished exploratory and primary recovery operations from secondary and tertiary recovery in this section since in the North Slope, it is common practice to have gas cycling and pressure maintenance during primary recovery operations.

Section 3137.82 defines productivity criteria as the characteristics of a well that warrant including a defined area surrounding the well in a PA. You must define the criteria in the unit agreement for each producible interval. Characteristics include things like the depth of the well, the geology surrounding the well that might affect drainage from the oil and gas reservoir, and the area you estimate the well is, or is capable of, draining.

You must be able to determine whether you meet the criteria when you drilled the well and you completed testing, after a reasonable period of time to analyze new data. This means that as soon as you complete testing and analyzing the data, it must be evident whether or not the well meets the productivity criteria.

To meet the productivity criteria, you must be able to demonstrate to BLM that the well has sufficient future production potential to pay for the costs of drilling, completing, and operating the well as a unit well. This is different from a paying lease well, since those wells need only cover the operating costs on a lease basis. A unit benefits from the efficiencies and economics of operating several leases jointly, whereas a non-unit lease must stand on its own.

This section also reiterates that BLM will consider wells that contribute to production when setting PA boundaries. Also see paragraph 3137.81(c).

Several commenters believe that we should amend this section to allow consideration of wells that contribute to unit production when setting PA boundaries. We agree and added paragraph (c) to this section stating that we will consider wells that contribute to unit production (*e.g.*, pressure maintenance and gas cycling) when setting PA boundaries. We also amended section 3137.81 by adding two new paragraphs, as explained above, to address gas cycling and pressure maintenance wells, and other wells that contribute to production, when establishing PA boundaries.

One commenter suggested that we make clear that well testing includes a reasonable period of time to evaluate whether or not the well meets the productivity criteria. We agree and amended paragraph (a) to allow a reasonable period of time to analyze new data.

One commenter said that most wells ''will not be tested and that the productivity criteria of such wells will be evaluated based on other available data such as well logs, core samples, formation sampling, pressure measurements, etc. prior to completing the wells and commencing sustained production.'' Although we recognize that the information gathered by the measurements and sampling the commenter lists may be indicators of a well's capability for production, we disagree that information gathered as suggested is sufficient to establish an initial production rate that we believe is necessary to establish a PA. It is important that we have physical evidence of a well's production and not merely estimates gleaned from logs or bottom whole pressure measurements. We do recognize that there may not immediately be a market for oil and gas and therefore it would be impractical to store the production from extended testing. However, we believe it is reasonable to expect well testing, however limited, to determine whether or not a well meets the productivity criteria.

Section 3137.83 explains that the first well you drill after unitization meeting the productivity criteria establishes the initial PA. If the initial PA contains wells that existed before BLM approved the unit agreement and the wells meet the productivity criteria, the wells will either:

(A) Be added to the PA if the well is in the same producible interval; or

(B) Establish a separate PA if the well is in a different producible interval. This will occur unless the unit agreement defines the productivity criteria to include separate producible intervals in a single PA.

One commenter suggested that we amend this section to say that ''a participating area should be established not necessarily when you have drilled the first well that meets the productivity criteria, but when you can demonstrate the lands or tracts meet the criteria.'' We disagree that a PA can ever be established absent a well meeting the productivity criteria. As stated in the previous section discussion, we require physical evidence and not mere estimates to establish a PA.

Section 3137.84 describes what you must submit to BLM to establish an initial or new PA or modify (add to or remove land from) an existing PA. You must submit to BLM:

(A) A statement that the well meets the productivity criteria as defined in the unit agreement. BLM may request you to submit information verifying your statement. This could include well logs and production test data;

(B) A map showing the new or revised PA and acreage. This map should be detailed enough for BLM to determine the PA boundary and the acreage in the PA; and

(C) An allocation schedule for each PA that establishes production allocation for each tract and for each record title holder and operating rights owner in the PA. This information is necessary to determine proper allocation of production and for royalty purposes.

We amended this section by allowing you to ''modify'' a PA. This addresses removing lands from an existing PA. We also added a provision that requires you to explain the reason for adding land to or removing land from an existing PA and information supporting your reason. For example, reasons that we would remove land from a PA could include geologic or reservoir characteristics that were unknown at the time of the PA establishment. Supporting documentation could include things like well logs, well test data, seismic data or core sample data.

One commenter suggested that we amend this section to allow land to be removed from a PA if subsequent information shows that some of the lands in the PA do not meet the productivity criteria. We agree and amended this section to allow for removal of lands from a PA. We also made corresponding changes to section 3137.85 and replaced section 3137.86 with a new section allowing for removal of lands from a PA.

One commenter suggested that we amend paragraph (a) by replacing ''well'' with ''the area proposed to be included meets the productivity criteria.'' We did not make the change. Section 3137.82 defines productivity criteria as ''characteristics of a unit well that warrant including a defined area surrounding the well in a participating area.'' Consistent with that definition, when a well meets the productivity criteria, we then derive the PA, or revise the PA, from the well's characteristics, after well testing and other data gathering, such as production history.

One commenter suggested we amend paragraph (c) of this section to make clear that the requirement for an allocation schedule should not be limited to NPR–A leases or tracts. We did not amend the section as suggested. The definitions provided at section 3137.5 of these regulations for ''NPR–A lease'' and ''Tract'' include, respectively, ''any oil and gas lease within the boundaries of the NPR–A, issued and administered by the United States under the Naval Petroleum Reserves Production Act of 1976, as amended (42 U.S.C. 6501–6508), that authorizes exploration for and removal of oil and gas' and ''land that may be included in an NPR–A oil and gas unit agreement and that may or may not be in a Federal lease.'' We believe the final rule is broad enough to include all types of land that may be included in an NPR–A unit.

One commenter suggested that we amend paragraph (c) by replacing ''operating rights owners'' with the term ''working interest owners.'' We did not make this change. BLM uses the term ''operating rights owner'' to mean any interest you hold that allows you to explore for, develop, or produce oil and gas. We use this term throughout our regulations to be consistent with our other regulations. Because there is no practical difference in the application of the term ''operating rights owners,'' we will use the term in these regulations as well.

One commenter suggested that this section should address situations ''where the allocation schedule for a participating area may be changed or adjusted pursuant to the agreement.'' We did not amend this section as requested since this section addresses establishing a PA or adding to or removing lands from a PA. However, we did amend section 3137.52(b) to require a new allocation schedule when there are modifications to a unit agreement that affect production allocation.

Section 3137.85 sets the effective date of an initial PA as the first day of the month in which you complete a well meeting the productivity criteria. However, this date can't be earlier than the effective date of the unit, even if the well was drilled and met the productivity criteria before BLM approved the unit. Only wells drilled after BLM approves the unit agreement will be considered initial unit wells. This section also sets the date of a modified PA as the earlier of first day of the month in which you:

(A) Complete a new well meeting the productivity criteria; or

(B) Should have known you needed to revise the allocation schedule.

We amended paragraph (a) slightly and we added a new paragraph (b) to this section to allow for removing lands from a PA, something the proposed rule did not do. The new paragraph (b) ties the effective date of a modified PA to the earlier of when you complete a new well meeting the productivity criteria or when you should have known you needed to revise the allocation schedule. We believe this reasonably puts the burden on the operator to

revise allocations timely so that committed tracts receive correct allocations.

One commenter said we should revise this section to set the effective date of a new or revised PA to be the date a new or revised allocation schedule is submitted or such other date as set out in the unit agreement. We adopted the commenter's suggestion in part. We did not tie the effective date of a PA to filing of an allocation schedule because, as we stated earlier, establishment of a PA must be tied to a well meeting the productivity criteria. However, as stated above, we did tie the effective date of a PA revision to when you complete a new well meeting the productivity criteria or when you should have known to revise the allocation schedule.

We amended this section in this manner to address both the situations when a new well revises a PA and the situations where there is no well, but additional information requires that the PA be revised. For the second standard the final rule sets a ''should have known'' standard for the revised PA date so that delayed filings of the allocation schedule do not also delay revision of the PA and the accompanying revised allocations. We did not amend this section to allow for the unit agreement to set the effective date of the PA as the commenter suggested. We believe that for Federal royalty payment purposes, it is reasonable to expect consistency among different unit agreements.

Section 3137.86 We eliminated this proposed section and replaced it with a new section that recognizes:

(A) Participating areas can be larger or smaller than originally established; and

(B) BLM can base PA expansion or contraction on data other than new well data.

Under this new section, if you obtain information demonstrating that a PA should be larger than previously determined, you must submit to BLM information required in section 3137.84. If the expanded PA is outside the unit boundaries, you must invite all owners of the oil and gas in the additional land to join the unit. If the owners agree to join the unit, you must submit to BLM an application to enlarge the unit. The application must include:

(A) A map showing the expanded unit area and for each new tract the information required in paragraph 3137.23(c); and

(B) A revised allocation schedule.

If any new committed tracts meet the productivity criteria, you must comply with section 3137.84 of this final rule.

If you obtain information demonstrating that the PA should be smaller than previously determined, you must comply with 3137.84 of this final rule and request BLM to remove from the PA all lands that do not meet the productivity criteria.

One commenter suggested that we amend this section to allow for creation or expansion of a PA based on information other than well data and to allow removal of land from a PA. We agree to the extent that a PA may be expanded or contracted based on new information demonstrating that the lands either do or do not meet the productivity criteria. However, as stated above, we do not agree that we may approve a PA absent a well that meets the productivity criteria.

Section 3137.87 describes your responsibilities if there are unleased Federal tracts in a PA. You must include any unleased Federal tracts in a PA even though BLM will not share in unit costs. However, you must allocate production to the unleased Federal tracts for royalty purposes as if they were committed to the agreement. The Federal Government receives royalties based on the production allocated to that land in the PA. If there are unleased Federal tracts that are leased after the effective date of the unit, you must admit them as of the effective date of the lease. Any time there is a new Federal lease admitted to the unit, you must submit to BLM revised maps, a new list of committed leases and new allocation schedules reflecting introduction of the new lease to the unit.

One commenter said that since the operator assumes all operational risk, we should amend this section by stating that BLM will not subsequently challenge any decision made by the operator, provided the decision was in accordance with the unit plan of operations. We did not adopt the comment. BLM will make every effort to allow the operator to follow the unit plan as approved. However, there may be unforeseen circumstances that may affect Federal lands and resources where it would be necessary for BLM to ensure that the public interest is protected.

One commenter suggested that we amend paragraph (a) to allow the unit operator access to the surface and subsurface of any unleased Federal lands in a unit. We did not amend the regulations as suggested. BLM will make every effort to lease Federal lands within the boundaries of a unit. Any such lease issued after the approval of a Federal unit will contain a requirement for the Federal lessee to join the unit or prove to BLM why they should not. However, we recognize there may be very limited circumstances where there are unleased Federal lands in an NPR–A unit. In such cases, BLM will not grant a unit operator access to the surface without some use authorization such as a special use permit or right-of-way. In no case will BLM allow oil and gas production from Federal lands without an oil and gas lease. Allowing oil and gas production in the absence of a lease is essentially leasing by fiat. That would be contrary to the intent of the statute to conduct an expeditious program of competitive leasing (*see* 42 U.S.C. 6508).

One commenter suggested that we amend paragraph (c) by requiring that subsequent Federal lessees be required to pay for their share of past development costs. We did not amend paragraph (c) as requested. Payments among interest owners are not a Federal concern and should be addressed in separate unit operating agreements to which BLM is not a party.

The final rule remains as proposed.

Section 3137.88 explains that wells on committed tracts outside any existing PA not meeting the productivity criteria are non-unit wells, and operations on those wells are non-unit operations. You must notify BLM within 60 calendar days after you determine that a well does not meet the productivity criteria. This means that you may no longer conduct operations on that well under the unit terms. You must conduct operations for that well under the terms of the lease or any other federally-approved agreements.

We amended this section by revising the second sentence to make it clearer. The proposed language could be misinterpreted to mean that there were no unit operations occurring anywhere in the unit. That was not our intent. We intended this section to say that you should notify BLM that the well did not meet the productivity criteria and, as a result, the well would no longer support unit operations.

One commenter was concerned that under this section wells not meeting the productivity criteria will not be added to the PA and must be produced on a lease basis. The commenter stated that those wells should be treated as unit wells because the production from such wells would result in underpayment or overpayment of the royalty owner in the tract in which the well is situated. The well should be treated as unit wells since the tract will either suffer drainage by reason of production from adjoining PAs or will have unitized substances driven from the PA to another well as a result of pressure maintenance. We did not amend this section as a result of this comment. The comment does not make clear why a well's status as a unit

well would protect it from drainage. Presumably, an operator of a well that is profitable will produce from that well whether it is a unit well or not. The provisions of this section are consistent with existing policy on lands outside of NPR–A.

One commenter stated that due to costs of operations, infrastructure and treatment and transportation facilities necessary to operate in NPR–A, it is unlikely that it would be feasible to operate and produce a single well on a non-unit basis. We agree that operating and producing from a single well in NPR–A is unlikely. However, these regulations do not preclude you from utilizing infrastructure, treatment and transportation facilities for non-unit production. We realize that to do this might require commingling production. Upon application, BLM will allow commingling of lease production and unit production (*see* 43 CFR 3162.7–2 and 3162.7–3).

One commenter suggested we add a paragraph to this section to address expanding a PA when a well drilled in the unit outside of a PA meets the productivity criteria. We did not amend this section as suggested. However, new section 3137.86 addresses expansion of existing PAs.

Section 3137.89 explains how production is allocated from wells that do not meet the productivity criteria. If a well not meeting the productivity criteria was drilled before the unit was formed, or outside the PA but still within the unit, production from that well must be allocated on a lease or other federally-approved oil and gas agreement basis. If a well was drilled after BLM approved the unit and was completed within an existing PA, the production from that well becomes part of the PA production, whether or not the well meets the productivity criteria. BLM may require the PA to be revised under section 3137.84 of this final rule, depending on the new well data.

One commenter suggested that we amend this section to allow wells drilled before the unit agreement was established that do not meet the productivity criteria to be considered unit wells. Section 9 of 42 U.S.C. 6508 says that ''Drilling, production, and well reworking operations performed in accordance with a unit agreement shall be deemed to be performed for the benefit of all lessees that are subject in whole or in part to such unit agreement.'' We interpret this to mean that wells drilled prior to the effective date of the unit are not operations ''performed in accordance with a unit agreement'' and consequently are not performed for the benefit of all lessees. Therefore, wells drilled before the effective date of the unit agreement cannot be unit wells.

Section 3137.90 explains that wells on committed tracts outside an existing PA not meeting the productivity criteria may be operated by someone other than the unit operator. However, as the unit operator, you must continue to operate wells you drilled after unit formation that do not meet the productivity criteria, and not included in the PA, unless BLM approves a new operator for those wells.

One commenter suggested we add the phrase ''and is not included in a participating area'' in paragraph (a) after the words ''the unit was formed'' and also add the phrase ''and are not included in a participating area'' in paragraph (b) following ''productivity criteria'' to make clear that the lands that don't meet the productivity criteria are not in the PA. We agree that the suggested change to paragraph (a) makes the rule clearer and amended the rule as suggested. However, we did not change paragraph (b) as suggested since that change would be in conflict with paragraph (b) of section 3137.89.

One commenter suggested that we add a paragraph to this section to state that the unit operator must operate wells in a PA not meeting the productivity criteria. We believe that section 3137.90(b) addresses this commenter's concern.

Section 3137.91 explains that a well on a committed tract that BLM previously determined was a non-unit well (it did not meet the productivity criteria) that now meets the productivity criteria may establish or modify a PA. You must notify BLM within 60 calendar days after you determine that the well meets the productivity criteria and demonstrate to us that the well meets the productivity criteria before you modify an existing PA or establish a new one. Operators must submit engineering and geologic and geophysical exploration information to prove to BLM that a well meets the productivity criteria.

One commenter suggested that we revise this section because the exact time a unit operator obtains information sufficient to determine that a well, after having previously been classified as a non-unit well, meets the productivity criteria is imprecise. We agree and amended this section by replacing ''of when this occurs'' with ''after you determine the well meets the productivity criteria.'' The change recognizes that it may take a period of time longer than 60 calendar days after completing the work on the well to determine whether the well meets the productivity criteria. The final rule gives you 60 calendar days after you determine that the well meets the productivity criteria to demonstrate that fact to BLM. We also replaced the word ''revise'' with the word ''modify'' to be consistent with other revisions to the final rule. We also amended the heading of this section to make it clearer.

Section 3137.92 explains that a PA terminates 60 calendar days after BLM notifies you that there is insufficient production to meet the operating costs of that production. The PA will not terminate if you demonstrate to BLM that your operations to restore or establish new production in the PA are:

(A) In progress within 60 calendar days after BLM's notification; and

(B) Being pursued diligently.

BLM will determine whether the production is sufficient to cover operating costs by comparing revenue from a well to production costs related to the actual lifting and producing costs, but not any capitalized or sunk costs related to project development. Capitalized or sunk costs are costs to pay for long term assets and costs already incurred, such as equipment necessary to operate on the lease.

We added a new paragraph (b) that allows an extension of time to meet the requirements of paragraphs (a)(1) and (a)(2), to show BLM that operations to restore or establish new production are in progress and you are diligently pursuing oil and gas production. To qualify for an extension, you must prove to BLM that reasons beyond your control prevent you from meeting those requirements. This change responds to commenter's concerns that seasonal drilling limitations may prevent them from meeting the requirements within 60 days.

One commenter suggested that we amend this section to ''allow for continuous or ongoing drilling to be completed prior to a final decision on termination of the participating area.'' We did not amend this section because we believe the commenter's concern is already addressed in this section. Paragraph (b) allows the PA to remain in effect if you show BLM that reasons beyond your control prevent you from meeting the requirements of the rule.

One commenter said we should amend this section to state how far away a well may be drilled and still be included in an expanded PA. We did not adopt this suggestion. Whether or not a well drilled outside of an existing PA that meets the productivity criteria will expand the PA will depend on geology, engineering and well spacing, and not on an arbitrarily determined distance set out in these rules.

One commenter suggested we amend this section by stating in paragraph (b) that the costs should be ''actual'' and replacing ''diligently'' with ''reasonably'' to remove subjectivity from these provisions. We did not adopt this suggestion. We do not believe the suggested changes would make this section more objective than what we proposed.

Production Allocation

Section 3137.100 explains that you must allocate production when a PA includes unleased Federal lands as if the unleased Federal lands were leased and committed to the unit agreement. This protects the Federal interest and ensures that the public is fairly compensated for Federal oil and gas produced.

The obligation to pay the United States for production from unleased Federal lands accrues from either the date the committed leases in the PA that includes unleased Federal lands receive a production allocation or Federal lands become unleased, whichever is later. Federal lands that were committed to the unit may become unleased for a variety of reasons; such as a lessee relinquishing its lease.

The royalty rate for production from unleased Federal lands in the unit is the greater of 12½ percent or the highest royalty rate of any lease in the unit.

We added a paragraph (c) to this section to provide a cross-reference to the Minerals Management Service oil and gas product valuation regulations at 30 CFR part 206.

Obligations and Extensions

Section 3137.110 makes it clear that nothing in a unit agreement modifies Federal lease stipulations including lease-specific environmental stipulations. We received no comment on this section and it remains as proposed.

Section 3137.111 explains that BLM will extend the primary term of all leases in a unit if there is:

(A) Actual production from a well in the unit that meets the productivity criteria; or

(B) Actual or constructive drilling or reworking operations.

These actions should demonstrate to BLM that you expended sufficient effort to explore for oil and gas that should be rewarded with an extension of the unit. We received no comment on this section. Because of the similarity of the subject matter between proposed sections 3137.111 and 3137.112, in the final rule we combined them into a new section 3137.111 and renumbered proposed section 3137.113 as 3137.112.

Section 3137.112 (proposed) contained a chart explaining that:

(A) Production from any unit well meeting the productivity criteria from any lease committed to the unit will extend all leases in the unit as long as that production is occurring and as long as the unit exists;

(B) BLM will approve an extension of up to three years for all leases committed to the unit if you perform actual or constructive drilling or reworking operations on any tract in the unit; and

(C) After an extension for actual or constructive drilling or reworking operations, all leases in the unit are eligible for an extension of up to three more years if you demonstrate reasonable diligence and reasonable monetary expenditures in performing the approved drilling or reworking operations during the initial extension. If, after the second extension, you still have not drilled a well within the unit meeting the productivity criteria and there is no producing well within the unit that meets the productivity criteria, the unit terminates.

As stated above, we combined this section with section 3137.111.

We also amended proposed paragraphs (b) and (c) of this section (final paragraphs (b)(2) and (b)(3)) to make it clear that the three year extension is for the initial extension. As proposed, this section could have been misinterpreted to mean that the extension period is limited to three years.

One commenter suggested we amend the table by allowing additional successive three year extensions for actual or constructive drilling or reworking operations for as long as those operations occur. We did not amend this section as requested.

NPR–A leases are issued with an initial term of ten years. The final rule allows up to six years of extensions beyond that initial term for actual or constructive drilling or reworking operations. We believe it is reasonable to expect an operator to establish production on an NPR–A lease within 16 years of lease issuance. In addition, the regulations provide for suspension of operations and production (see 3135.2 of this rule), which essentially tolls the clock for the period of the suspension.

Section 3137.112 (proposed section 3137.113) explains that BLM will extend all committed NPR–A leases if, for reasons beyond your control, you were prevented from starting actual or constructive reworking or drilling operations. You are eligible for two extensions for a total of six years. You must resume actual or constructive drilling or reworking operations as soon as the reasons that prevented you from starting operations no longer exist. If you do not resume operations, BLM will cancel the extension and the unit will terminate. After the unit terminates, leases revert to their original lease terms. Any leases whose term has expired will also terminate unless they are otherwise held by production from the lease or they are part of another agreement from which production would hold the lease.

One commenter suggested that we amend this section by replacing ''committed leases'' with ''NPR–A leases'' since ''committed leases'' is not defined. We agree partially with the commenter. We believe the term ''committed leases'' is self explanatory. However, since BLM has authority under these regulations and 42 U.S.C. 6508 to extend only committed NPR–A leases, we amended this section to make this clear.

One commenter suggested that we make it clear that seasonal limitations are not counted as events that would trigger extensions. We did not make the suggested change because we believe this section clearly states those situations that would trigger an extension.

Change in Ownership

Section 3137.120 states that transferees of a unitized lease are subject to the terms and conditions of the unit agreement. This would include grantees and successors in interest. This is standard practice for BLM-approved units and in the oil and gas industry in general. We didn't receive any comment on this section and it remains as proposed.

Unit Termination

Section 3137.130 describes the circumstances under which BLM will approve voluntary termination. BLM will approve voluntary termination of the unit any time before the unit operator discovers production meeting the productivity criteria, or the unit operator certifies that at least 75 percent of the operating rights (working interest) owners on a surface acreage basis agree to the termination. BLM chose 75 percent of operating rights (working interest) owners as the standard to discourage voluntary unit termination against the will of most of the lessees, and to protect interest owners in the unit. This section remains as proposed.

Section 3137.131 explains that if the unit terminated before the unit operator met the initial development obligations, BLM's approval of the unit agreement is

revoked. The consequences of this are that lessees forfeit any benefits they may have received as a result of unitization, such as lease extensions and suspensions. Any lease that BLM extended as a result of being committed to the unit will be terminated unless it qualified for an extension under section 3135.1–5 of this part. BLM will cancel any lease suspension BLM granted as a result of a lease being committed to the unit. This section remains as proposed.

Section 3137.132 explains that a unit automatically terminates if you did not meet a continuing development obligation before you establish a PA. You would have negotiated continuing development obligations with BLM that would be specified in the unit agreement, and as such, BLM will strictly enforce them. The effective date of the termination is the day after you did not meet a continuing development obligation.

One commenter suggested that the effective date of unit termination should be the day after BLM certifies and the operator receives notice of certification that the operator did not meet a continuing development obligation. The commenter said this would ensure that BLM does not prematurely terminate a unit for delay in performance of a continuing development obligation for reasons beyond the control of the operator. We did not amend this section as suggested, but we added a new section 3137.72, allowing you to apply for an extension for meeting the initial or a continuing development obligation. This assures that the operator, who has control of the information, will come forward in a timely manner to seek an extension.

Section 3137.133 explains that a unit terminates when the last PA of a unit terminates. If there are no PAs in the unit, it means that there is no production from any well that meets the productivity criteria in the unit area. Consequently, the reason for the unit no longer exists. This section remains as proposed.

Section 3137.134 explains that when the unit terminates, all committed leases are subject to their original provisions. Any lease that has completed its primary term on or before the unit terminates also terminates, unless it qualifies for an extension under current section 3135.1–5. We didn't receive any comments on this section and it remains as proposed.

Section 3137.135 explains that the unit operator must submit to BLM a plan and schedule for mitigating the impact of unit operations within three months after unit termination. Operators must describe in detail planned plugging and abandonment and surface restoration operations.

One commenter said that with respect to any multiple owner units, including State of Alaska leases, abandonment and restoration operations should be governed by the unit agreement, State statutes and regulations and the terms and conditions of the lease. We agree in part. Although BLM has authority over production accountability for nonfederal lands in a Federal unit, BLM has no authority over nonfederal well approval or abandonment and restoration operations. On nonfederal lands, for abandonment and restoration operations, operators must comply with terms and conditions of their lease and State statutes and regulations.

Appeals

Section 3137.150 explains that any person who is adversely affected by a BLM decision under this subpart may appeal that decision. The proposed rule cross-referenced State Director Review (SDR) regulations that BLM is developing. Since BLM has not finalized the SDR regulations, this final rule cross-references existing SDR regulations in subpart 3165, instead. The final rule flips proposed paragraphs (a) and (b) since chronologically, State Director Reviews come before appeals and also makes it clear that an adversely affected party may file an SDR or appeal directly under parts 4 and 1840.

One commenter suggested that we include an appeals process for unit decisions that would require BLM to issue a decision within 60 days of the appeal. We did not add a new appeals provision to the final rule since the existing appeals provisions in 43 CFR subpart 3165 already apply to NPR–A.

Another commenter suggested that we add a dispute resolution provision in the final rule. We did not add a dispute resolution provision to the final rule, but you may rely on existing appeal regulations in subpart 3165 for disputes with BLM decisions. Alternative dispute resolution for disputes among working interest owners is outside of the scope of this rulemaking. However, we suggest third party unit operating agreements to which BLM is not a party can address any such dispute resolution procedures.

Subpart 3138—Subsurface Storage Agreements in NPR–A

This final rule adds a new subpart to BLM's NPR-A leasing regulations dealing with subsurface storage agreements.

Section 3138.10 states that BLM will enter into an agreement to store oil or gas in existing geologic structures on either leased or unleased Federal lands, if you prove to BLM that the storage is necessary to avoid waste or to promote conservation of natural resources, including oil and gas. Under this subpart you may store gas produced from Federal or nonfederal lands. This is consistent with existing policy on lands outside of NPR–A.

One commenter suggested that in order to ensure consistency with the State of Alaska's underground storage rules, BLM consider adopting the State rules as our own, but did not explain what provisions of the State rules we should consider. We did not amend the rule as suggested. The final NPR–A subsurface storage rule is consistent with policy and procedure on Federal lands outside of NPR–A. Also, we believe the final rule is flexible enough so that it is not necessarily inconsistent with Alaska rules on subsurface storage (*see* Chapter 83, sections 500–520 of the Alaska Administrative Code). Also, BLM will consider issues of concern to the State before approving subsurface storage agreements on Federal lands.

Section 3138.11 requires you to submit to BLM an application to receive a subsurface storage agreement. In the application you must include the following:

(A) The reason for forming a subsurface storage agreement. This is in addition to the proof required by section 3138.10. For example, your justification could be that you require subsurface storage while waiting for a distribution system to be built or that you require storage for economic reasons, or to avoid waste;

(B) A description of the area you plan to include in the agreement. This should include a legal land description of all Federal or nonfederal leases within the area of the storage agreement;

(C) A description of the formation you plan to use for storage. This should include the standard geologic name or designation, if any, of the reservoir, and the depths at which the formation exists;

(D) Proposed storage or rental fees based on the value of the storage, injection, and withdrawal volumes and rental or other income you might generate for letting or subletting the storage area. BLM could approve or disapprove your proposed fee structure or make a counter-proposal that we find acceptable;

(E) Any royalty payment for oil and gas that existed in the formation before you injected gas for storage that may be produced when you withdraw the stored oil or gas;

(F) A description of how often and under what circumstances you propose that you and BLM should renegotiate

fees and payments. For example, this could be based on anticipated changes in the rate of reservoir fill-up or withdrawal from the reservoir;

(G) The proposed effective date and term of the agreement. This should be tied to your justification for the agreement (see A above);

(H) Certification that all owners of mineral rights and lease interests have consented to the gas storage agreement in writing. This is to protect mineral owners' and lessees' mineral rights. BLM will reject subsurface storage agreement applications that do not comply with this provision;

(I) An ownership schedule showing lease or land status. This should include the status of leased and unleased and Federal and nonfederal properties;

(J) A schedule showing the participation factor for all parties to the agreement. The schedule should list the parties to the agreement and the percent or volume of oil or gas stored for each of them; and

(K) Data demonstrating the capability of the reservoir to store oil or gas. This could include geologic maps showing the storage formation, reservoir data demonstrating the volume of area available for storage, and similar data.

This section also explains that the terms of the storage agreement are negotiated between you and BLM. The agreement must include terms on bonding and reservoir management. BLM may request additional data we find necessary to approve your application.

Section 3138.12 describes what you must pay for storage. The fee could be based on any combination of storage fees, rentals, or royalties to which you and BLM agree. When determining a fair storage fee, BLM will usually take into consideration what operators in the same area are paying for similar gas storage arrangements on either Federal or nonfederal land.

In the final rule we amended this section by deleting the last sentence. We realize that commingling of native gas and stored gas will occur and, as a practical matter, it would be impossible to segregate the two when withdrawing the gas from storage.

Part 3160—Onshore Oil and Gas Operations

This final rule amends the existing ''Purpose'' section of BLM's operating regulations. Part 3160 applies to NPR–A lease operations and to unit operations. This section revises part 3160 to make it clear that the suspension and royalty reduction regulations in part 3160 apply to operations on other Federal lands, but not to NPR–A. The proposal incorrectly limited the revision to section 3103.4–4.

III. Procedural Matters

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action and was not reviewed by the Office of Management and Budget (OMB).

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government since the costs of operating and leasing in the NPR–A would not be substantially affected (see the economic analysis).

b. This rule will not create inconsistencies with other agencies' actions. This rule does not change the relationships of the oil and gas program with other agencies' actions. These relationships are all encompassed in agreements and memorandums of understanding that this rule will not change.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The rule does not deal with entitlements, grants, loan programs, or rights and obligations of their recipients; BLM's oil and gas program does not typically have an impact on these issues and neither would this final rule. BLM does charge user fees for certain activities on Federal lands. However, this rule would not implement any new user fees. Any fees, such as filing fees for leases, already exist under other regulations.

d. This rule will not raise novel legal or policy issues. NPR–A leasing regulations already exist. However, those regulations do not address unitization, suspension of rental and royalty, suspension of operations and production or subsurface storage agreements. This rule would make operating practices in the NPR–A more consistent with those on Federal lands outside of NPR–A in that unitization, and lease extensions and suspensions would become available to NPR–A lessees consistent with the provisions of 42 U.S.C. 6508.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended (5 U.S.C. 601–612) (RFA), to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities.

This rule will not have a significant economic effect on a substantial number of small entities as defined under RFA. A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

For the purposes of this section, a ''small entity'' is considered to be an individual, limited partnership, or small company with fewer than 500 employees. Many of the operators BLM deals with in the oil and gas program would be considered to be small entities.

Leasing decisions could potentially impact small operators. However, this rule is independent of leasing decisions. The rule is neutral as to whether or not leasing will occur in NPR–A. Due to the significant costs associated with oil and gas operations in the NPR–A, we do not anticipate many small operators will lease oil and gas in the NPR–A. Having an NPR–A lease, as that is defined in the final rule, is a condition precedent to unit formation in NPR–A. If small operators did lease in NPR–A, the economic impacts associated with this final rule are positive, but minimal, for operators in general (see the economic analysis) and would also be so for small operators. Therefore, the rule would not have a significant economic impact on a substantial number of small entities under the RFA.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more (see the economic analysis).

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 rule would not affect costs or prices for consumers since the actions associated with the rule would have minimal economic impact on the industry (see the economic analysis).

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises, but could positively affect them by making it more attractive to lease oil and gas in the NPR–A.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (UMRA) (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. The final rule would not change the relationship between BLM's oil and gas program and small governments.

b. This rule will not produce a Federal mandate of $100 million or greater in any year, *i.e.,* it is not a ''significant regulatory action'' under the UMRA (see the economic analysis). These regulations do not impose an unfunded mandate on State, local or Tribal governments or the private sector of more than $100 million per year; nor do these regulations have a significant or unique effect on State, local or Tribal governments or the private sector.

Takings Implications

In accordance with Executive Order 12630, the rule does not represent a government action capable of interfering with constitutionally protected property rights. A takings implication assessment is not required. The rule would not take anyone's property. The rule would not take away or restrict an operator's right to develop an NPR–A oil and gas lease under the lease terms. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Federalism Implications

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. 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. The rule does not preempt State law. The rule would make operations in the NPR–A more consistent with practices on other Federal lands.

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. BLM drafted this rule in plain-language to provide clear standards and to ensure that the rule is written clearly. BLM consulted with the Department of the Interior's Office of the Solicitor throughout the rule drafting process for the same reasons.

Paperwork Reduction Act

This regulation does require information collection under the Paperwork Reduction Act. The Office of Management and Budget has approved the information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and assigned OMB approval number 1004–0196.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 516 Departmental Manual (DM). This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

BLM has prepared an environmental assessment and has found that the rule would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). A detailed statement under NEPA is not required.

Environmental effects that could occur would be the result of leasing, not the result of these regulations. To the extent that there are any environmental effects incident to these regulations, they would likely be beneficial. Unitization combines the development plans of several lessees into a single consolidated plan of development under one operator instead of separate operators and separate plans of development for each lease. The advantage of having one operator and one plan of development under one unit agreement is that the effect on the environment could be minimized in contrast to having several plans of development for each lease covering an oil and/or gas field with a relatively greater environmental effect.

For subsurface storage agreements, the oil or gas is reinjected, and would be stored in a geologic structure. There are no tanks installed and the oil or gas usually is reinjected using existing surface and subsurface operating equipment from prior operations. There is very little environmental impact involved in storing oil or gas in this manner. The operator must demonstrate that storage is necessary to avoid waste or to promote the conservation of natural resources which otherwise may be vented or lost. Therefore, the regulations should encourage better, more efficient development with a smaller environmental ''footprint'' and effects.

These regulations would not add to the effects of other actions, but could facilitate less of an environmental footprint due to consolidating and unifying the development of a given oil or gas field under one operator. The authorization of subsurface storage agreement would promote the conservation of oil or gas which otherwise may be vented or lost. This would conserve natural resources.

Government-to-Government Relationship with Tribes

In accordance with the memorandum issued by the President on April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated whether formal government-to-government consultation with Indian Tribes is required with respect to these rules. In this case, we have concluded that, within the context of this rulemaking, formal consultation other than opportunities provided to the public for notice and comment is not required.

Executive Order 13175 (''E.O. 13175''), ''Consultation and Coordination with Indian Tribal Governments'' (November 6, 2000), (65 FR 67249) supplements the memorandum of April 29, 1994. E.O. 13175 provides that Federal agencies must consult with Indian Tribal Governments before formal promulgation of regulations ''that have Tribal implications.'' E.O. 13175 defines ''Indian Tribes'' for purposes of government-to-government consultation as those ''that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.'' E.O. 13175 at Section 1(b). In accordance with this mandate, the Bureau of Indian Affairs recently published a list of recognized Tribes, including a large number of Native Alaskan entities including Villages, Communities, and Tribes. *See* 65 FR 13298 (March 13, 2000). If there is a duty of government-to-government consultation, it would be owed to those listed Tribal governments.

The final regulations are designed to permit consolidated operation of oil and gas leases on Federal lands and thereby promote conservation. None of the recognized Tribal governments have significant oil and gas interests within NPR–A or within the vicinity of NPR–A. Therefore, nothing in these final regulations has ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal

government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' (*See* Section 1(a) of E.O. 13175.) Accordingly, the final regulations do not have Tribal implications and there is no government-to-government consultation obligation in this case.

Additionally, we are aware that a number of Alaska Native corporations organized under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) (ANCSA) may have oil and gas interests. These corporations could potentially become participants in units which include Federal NPR–A leases. If so, they would be eligible to participate in those unit agreements in the same manner as any other participants. However, no special consultation with such corporations is required as a matter of law. The Bureau of Indian Affairs has recently declined to include such corporations on the list of recognized Tribes eligible for government-to-government consultation. *See* 65 FR 13298 (March 13, 2000). The Bureau of Indian Affairs previously indicated that ANCSA corporations ''are formally state-chartered corporations rather than tribes in the conventional legal or political sense'' and that Alaskan Native Villages were Indian Tribes. *See* ''Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs,'' 60 FR 9250 (February 16, 1995).

Finally, while these regulations impose no special government-to-government consultation obligation upon the Department, there was ample opportunity for the Tribal governments, along with the public generally, to comment during the comment period, in accordance with the notice and comment requirements of the Administrative Procedure Act.

Therefore, in accordance with E.O. 13175, we have found that this final rule does not include policies that have Tribal implications.

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a significant energy action under Executive Order 13211. It will not have an adverse effect on energy supplies. To the extent that the rule allows more efficient oil and gas operations in NPR–A, the rule should have a minimal, but positive, impact on energy supplies.

Economic Analysis

Unitization

The final rule implements the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6501 *et seq.*), which was amended by Public Law 105–83, and allowed for the creation of units in the NPR–A. Unitization could increase the potential value of NPR–A leases, which could result in higher bonus bids at lease sales. Operators could also obtain some benefit due to some reduction in operating and reporting costs. These reduced costs are a benefit derived from unitization since production may occur from fewer areas and reporting requirements could be consolidated. However, the essential costs of operating and leasing in NPR–A will not be substantially affected. As previously noted, there are other non-economic benefits to unitization (*see* discussion of section 3137.10).

Once leasing occurs in NPR–A, the unitization rules may increase the probability of finding and producing oil and gas there through more efficient and economic exploration and production, but the net effect should be small enough that there would not be a measurable net effect on oil and gas prices. Any impacts on the economy, productivity, competition, or jobs should be positive. Development could only occur if it did not endanger the environment, public health, or safety.

To the extent that the rules may increase the bonus bids for leases and the probability of production, the potential increase in revenue and economic activity could have a positive effect on State, local, and tribal governments and communities.

Subsurface Storage

The final rule also allows for subsurface storage agreements in the NPR–A. This will have little economic effect. Companies often use existing infrastructures to re-inject oil or gas into existing geologic structures. Companies should derive an economic benefit since they could store oil or gas while waiting for distribution of it or while waiting for more favorable economic conditions. The Federal government will derive a benefit in the form of storage fees. The economic benefits of subsurface storage, however, derived by the companies operating in NPR–A or the Federal government should not be significant. In 2000 BLM had in effect 32 oil and gas storage agreements in the lower 48 states which provided $1,085,605 in revenues. That averages out to about $33,925 in revenue payments to the United States per agreement. We anticipate far fewer agreements in NPR–A than in the lower 48 with about the same average income stream being generated per agreement. These could impact State, local, and tribal governments and communities positively, but only minimally. Any impacts on the economy, productivity, competition, or jobs should be positive, but minimal.

Waiver, Suspension, or Reduction of Rental or Royalty

The final rule also allows for the waiver, suspension, or reduction of rental or royalty on NPR–A leases. This provision will have minimal economic impact. BLM will not allow any waiver, suspension, or reduction of rental or royalty to take place unless it encouraged the greatest ultimate recovery of oil and gas or it was in the interest of conservation. Operators will only get the benefit if they proved to BLM that they could not successfully operate the lease without the benefit. These standards are high because BLM believes we should take these actions only as a last resort, to save a lease which ''cannot be successfully operated under the terms provided therein.'' (42 U.S.C. 6508).

Operators will benefit since they will be able to continue to operate their leases. BLM will benefit as well since producible leases would not be shut down and the Federal government will continue to receive revenue, albeit at a reduced rate. State, local, and Tribal governments and communities could potentially be positively affected since leases that would under other circumstances be shut down, will continue to produce, providing jobs and revenues to local areas. Any impacts on the economy, productivity, competition, or jobs should be positive, but minimal.

Suspensions of Operations and Production

This final rule allows for suspension of operations and production for NPR–A leases. Suspensions of operations and production give operators relief from lease obligations when they are prevented from complying with the obligations for reasons that are beyond their control. During the period of the suspension, lessees are not required to pay rental or royalty on their lease, but they do not have beneficial use of their lease during the period. The lease term will be extended by the time period of the suspension.

One example where lease suspensions would be appropriate would be where an operator has found oil and gas in producible quantities, but there is no transportation system available to get the oil and gas to market. BLM will

suspend operations and production on the lease until operations on the lease resume or when BLM determines the reason for the suspension no longer exists.

Any economic impacts associated with this provision should, in the long run, be positive. The alternative to suspension would be shutting down lease operations. This alternative is not beneficial to the government or operators. Short-term loss in rentals and royalties is preferable to shutting down a lease completely. State and local governments and native communities could be positively impacted since leases that would under other circumstances be shut down, would, in the long run, continue to produce, providing jobs and revenues to local areas. Any impacts on the economy, productivity, competition, or jobs would be positive, but minimal.

Lease Extensions

This final rule allows for the extension of unit leases if, from anywhere in the unit there is:

(A) Actual production from a well in the unit that meets the productivity criteria set out in the unit agreement;

(B) Actual or constructive drilling operations; or

(C) Actual or constructive reworking operations.

This provision should have little economic impact on the industry as a whole, but could make unitizing leases in the NPR–A more attractive to individual operators. Operators will get the benefit of diligently developing their leases by way of lease extensions. This is a benefit to industry, since leases in units which otherwise would be canceled will be extended if there is constructive drilling or reworking within the unit.

Any economic impacts associated with this provision should, in the long run, be positive. The alternative to extending leases in the unit would be to cancel a lease and shut down operations. This alternative is not beneficial to the government or operators. State, local, and Tribal governments and communities would be positively affected since leases that would under other circumstances be shut down will continue to operate, increasing the chances of discovering oil and gas. If producible oil and gas is discovered, the unit could provide jobs and revenues to local areas. Any impacts on the economy, productivity, competition, or jobs should be positive, but minimal.

Fixing Lease Term at 10 Years

Congress mandated that the initial NPR–A lease term be 10 years. The provision setting the lease term at 10 years, consistent with the Congressional mandate, will have little, if any, economic impact. It could benefit operators since the term will be fixed at 10 years consistent with the statute, whereas under current regulations, the term could be less. Longer lease terms in the NPR–A are preferable since there are difficult geology and harsh climate in the NPR–A make it difficult to operate in that region. Longer lease terms allow operators additional time to deal with the geologic and climatic conditions in NPR–A.

Administrative Provision

The provision that clarifies which suspension regulations apply to NPR–A is strictly administrative and has no economic impact.

Authors

The principal authors of this rule are Erick Kaarlela (Washington Office), Chris Gibson (Alaska State Office), Richard Watson (Washington Office Fluid Minerals Group), Harvey Blank (Office of the Solicitor), Ian Senio (Washington Office Regulatory Affairs Group), Peter Ditton (Anchorage Field Office), and Greg Noble (Anchorage Field Office).

List of Subjects

43 CFR Part 3130

Alaska, Government contracts, Mineral royalties, Oil and gas exploration, Oil and gas reserves, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3160

Administrative practice and procedure, Government contracts, Indians-lands, Mineral royalties, Oil and gas exploration, Penalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: March 25, 2002.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

Accordingly, for the reasons stated in the preamble, and under the authorities cited below, amend Title 43, Subtitle B, Chapter II, Subchapter C, Parts 3130 and 3160 as follows:

PART 3130—OIL AND GAS LEASING: NATIONAL PETROLEUM RESERVE—ALASKA

1. Revise the authority citation for part 3130 to read as follows:

Authority: 42 U.S.C. 6508, 43 U.S.C. 1733 and 1740.

2. Revise § 3130.4–2 to read as follows:

§ 3130.4–2 Lease term.

The primary term of an NPR–A lease is 10 years.

3. Add § 3133.3 and § 3133.4 to subpart 3133 to read as follows:

§ 3133.3 Under what circumstances will BLM waive, suspend, or reduce the rental, royalty, or minimum royalty on my NPR–A lease?

(a) BLM will waive, suspend, or reduce the rental, royalty, or minimum royalty of your lease if BLM finds that—

(1) It encourages the greatest ultimate recovery of oil or gas or it is in the interest of conservation; and

(2) You can't successfully operate the lease under its terms. This means that your cost to operate the lease exceeds income from the lease.

(b) If the subsurface estate is held by a regional corporation, BLM will consult with the regional corporation, in accordance with 43 CFR 2650.4–3, before approving an action under this section. *Regional corporation* is defined in 43 U.S.C. 1602.

§ 3133.4 How do I apply for a waiver, suspension or reduction of rental, royalty or minimum royalty for my NPR–A lease?

(a) Submit to BLM your application and in it describe the relief you are requesting and include—

(1) The lease serial number;

(2) The number, location and status of each well drilled;

(3) A statement that shows the aggregate amount of oil or gas subject to royalty for each month covering a period of at least six months immediately before the date you filed the application;

(4) The number of wells counted as producing each month and the average production per well per day;

(5) A detailed statement of expenses and costs of operating the entire lease;

(6) All facts that demonstrate that you can't successfully operate the wells under the terms of the lease;

(7) The amount of any overriding royalty and payments out of production or similar interests applicable to your lease; and

(8) Any other information BLM requires.

(b) Your application must be signed by—

(1) All record title holders of the lease; or

(2) By the operator on behalf of all record title holders.

4. Revise the subpart 3135 heading to read as follows:

Subpart 3135—Transfers, Extensions, Consolidations, and Suspensions

5. Add §§ 3135.2 through 3135.8 as follows:

§ 3135.2 Under what circumstances will BLM require a suspension of operations and production or approve my request for a suspension of operations and production for my lease?

(a) BLM will require a suspension of operations and production or approve your request for a suspension of operations and production for your lease(s) if BLM determines that—

(1) It is in the interest of conservation of natural resources;

(2) It encourages the greatest ultimate recovery of oil and gas, such as by encouraging the planning and construction of a transportation system to a new area of discovery; or

(3) It mitigates reasonably foreseeable and significantly adverse effects on surface resources.

(b) BLM will suspend operations and production for your lease if it determines that, despite the exercise of due care and diligence, you can't comply with your lease requirements for reasons beyond your control.

(c) If BLM requires a suspension of operations and production or approves your request for a suspension of operations and production, the suspension—

(1) Stops the running of your lease term and prevents it from expiring for as long as the suspension is in effect;

(2) Relieves you of your obligation to pay rent, royalty, or minimum royalty during the suspension; and

(3) Prohibits you from operating on, producing from, or having any other beneficial use of your lease during the suspension. However, you must continue to perform necessary maintenance and safety activities.

§ 3135.3 How do I apply for a suspension of operations and production?

(a) You must submit to BLM an application stating the circumstances that are beyond your reasonable control that prevent you from operating or producing your lease(s).

(b) Your suspension application must be signed by—

(1) All record title holders of the lease; or

(2) The operator on behalf of the record title holders of the leases committed to an approved agreement.

(c) You must submit your application to BLM before your lease expires.

(d) Your application must be for your entire lease.

§ 3135.4 When is a suspension of operations and production effective?

A suspension of operations and production is effective—

(a) The first day of the month in which you file the application for suspension or BLM requires the suspension; or

(b) Any other date BLM specifies in the decision document.

§ 3135.5 When should I stop paying rental or royalty after BLM requires or approves a suspension of operations and production ?

You should stop paying rental or royalty on the first day of the month that the suspension is effective. However, if there is any production sold or removed during that month, you must pay royalty on that production.

§ 3135.6 When will my suspension terminate?

(a) Your suspension terminates—

(1) On the first day of the month in which you begin to operate or produce on your lease with BLM approval; or

(2) The date BLM specifies in a written notice to you.

(b) You must notify BLM at least 24 hours before you begin operations or production under paragraph (a)(1) of this section.

§ 3135.7 What effect does a suspension of operations and production have on the term of my lease?

(a) *Primary term.* If BLM grants a suspension of operations and production for your lease, the suspension stops the running of the primary term of your lease for the period of the suspension.

(b) *Extended term.* If your lease is in its extended term, a suspension holds your lease in its extended term for the period of the suspension as if it were in production.

§ 3135.8 If BLM requires a suspension or grants my request for a suspension of operations and production for my lease, when must I next pay advance annual rental, royalty, or minimum royalty?

(a) You are not required to submit your next rental or minimum royalty payment until the date the suspension terminates. Therefore, if your suspension begins in month 3 of lease year A and ends in month 2 of lease year B, you must submit your rental payment for lease year B when your suspension ends. BLM will send a written notice to the lessee and operator stating that the suspension is terminated and the date your rental payment for lease year B is due to MMS. BLM's notice also will state when you must pay any minimum royalty due for lease year A. Your minimum royalty for lease year B will be due at the end of that year.

(b) If you remove or sell any production from the lease during the term of the suspension, you must pay royalty on that production.

6. Add a new subpart 3137 to part 3130 to read as follows:

Subpart 3137—Unitization Agreements—National Petroleum Reserve-Alaska

Sec.

3137.5 What terms do I need to know to understand this subpart?

General

3137.10 What benefits do I receive for entering into a unit agreement?

Application

3137.15 If the Federal lands constitute less than 10 percent of the lands in the proposed unit area, is the unit agreement subject to Federal regulations or approval?

3137.20 Is there a standard unit agreement form?

3137.21 What must I include in a NPR–A unit agreement?

3137.22 What are the size and shape requirements for a unit area?

3137.23 What must I include in my NPR–A unitization application?

3137.24 Why would BLM reject a unit agreement application?

3137.25 How will the parties to the unit know if BLM approves the unit agreement?

3137.26 When is a unit agreement effective?

3137.27 What effect do subsequent contracts or obligations have on the unit agreement?

3137.28 What oil and gas resources of committed tracts does the unit agreement include?

Development

3137.40 What initial development obligations must I define in a unit agreement?

3137.41 What continuing development obligations must I define in a unit agreement?

Optional Terms

3137.50 What optional terms may I include in a unit agreement?

3137.51 Under what conditions does BLM permit multiple unit operators?

3137.52 How may I modify the unit agreement?

Unit Agreement Operating Requirements

3137.60 As the unit operator, what are my obligations?

3137.61 How do I change unit operators?

3137.62 What are my liabilities as a former unit operator?

3137.63 What are my liabilities after BLM approves me as the new unit operator?

3137.64 As a unit operator, what must I do to prevent or compensate for drainage?

Development Requirements

3137.70 What must I do to meet initial development obligations?
3137.71 What must I do to meet continuing development obligations?
3137.72 What if reasons beyond my control prevent me from meeting the initial or a continuing development obligation by the time the unit agreement specifies?
3137.73 What will BLM do after I submit a plan to meet continuing development obligations?
3137.74 What must I do after BLM approves my continuing development obligations plan?
3137.75 May I perform additional development outside established participating areas to fulfill continuing development obligations?
3137.76 What happens if I do not meet a continuing development obligation?

Participating Areas

3137.80 What are participating areas and how do they relate to the unit agreement?
3137.81 What is the function of a participating area?
3137.82 What are productivity criteria?
3137.83 What establishes a participating area?
3137.84 What must I submit to BLM to establish a new participating area, or modify an existing participating area?
3137.85 What is the effective date of a participating area?
3137.86 What happens to participating area when I obtain new information demonstrating that the participating area should be larger or smaller than previously determined?
3137.87 What must I do if there are unleased Federal tracts in a participating area?
3137.88 What happens when a well outside a participating area does not meet the productivity criteria?
3137.89 How does production allocation occur from wells that do not meet the productivity criteria?
3137.90 Who must operate wells that do not meet the productivity criteria?
3137.91 When will BLM allow a well previously determined to be a non-unit well to be used in establishing or modifying a PA?
3137.92 When does a participating area terminate?

Production Allocation

3137.100 How must I allocate production to the United States when a participating area includes unleased Federal lands?

Obligations and Extensions

3137.110 Do the terms and conditions of a unit agreement modify Federal lease stipulations?
3137.111 When will BLM extend the primary term of all leases committed to a unit agreement?
3137.112 What happens if I am prevented from performing actual or constructive drilling or reworking operations?

Change in Ownership

3137.120 As a transferee of an interest in a unitized NPR–A lease, am I subject to the terms and conditions of the unit agreement?

Unit Termination

3137.130 Under what circumstances will BLM approve a voluntary termination of the unit?
3137.131 What happens if the unit terminated before the unit operator met the initial development obligations?
3137.132 What if I do not meet a continuing development obligation before I establish any participating area in the unit?
3137.133 After participating areas are established, when does the unit terminate?
3137.134 What happens to committed leases if the unit terminates?
3137.135 What are the unit operator's obligations after unit termination?

Appeals

3137.150 How do I appeal a decision that BLM issues under this subpart?

Subpart 3137—Unitization Agreements—National Petroleum Reserve–Alaska

§ 3137.5 What terms do I need to know to understand this subpart?

As used in this subpart—

Actual drilling means operations you conduct that are similar to those that a person seriously looking for oil or gas could be expected to conduct in that particular area, given the existing knowledge of geologic and other pertinent facts about the area to be drilled. The term includes the testing, completing, or equipping of the drill hole (casing, tubing, packers, pumps, etc.) so that it is capable of producing oil or gas. Actual drilling operations do not include preparatory or preliminary work such as grading roads and well sites, or moving equipment onto the lease.

Actual production means oil or gas flowing from the wellbore into treatment or sales facilities.

Actual reworking operations means reasonably continuous well-bore operations such as fracturing, acidizing, and tubing repair.

Committed tract means—

(1) A Federal lease where all record title holders and all operating rights owners have agreed to the terms and conditions of a unit agreement, committed their interest to the unit; or

(2) A State lease or private parcel of land where all oil and gas lessees and all operating rights owners or the owners of unleased minerals have agreed to the terms and conditions of a unit agreement.

Constructive drilling means those activities that are necessary to prepare for actual drilling that occur after BLM approves an application to drill, but before you actually drill the well. These include, but are not limited to, activities such as road and well pad construction, and drilling rig and equipment set-up.

Constructive reworking operations means activities that are necessary to prepare for well-bore operations. These may include rig and equipment set-up and pit construction.

Continuing development obligations means a program of development or operations you conduct that, after you complete initial obligations defined in a unit agreement—

(1) Meets or exceeds the rate of non-unit operations in the vicinity of the unit; and

(2) Represents an investment proportionate to the size of the area covered by the unit agreement.

Drainage means the migration of hydrocarbons, inert gases (other than helium), or associated resources caused by production from other wells.

NPR–A lease means any oil and gas lease within the boundaries of the NPR–A, issued and administered by the United States under the Naval Petroleum Reserves Production Act of 1976, as amended (42 U.S.C. 6501–6508), that authorizes exploration for and removal of oil and gas.

Operating rights (working interest) means any interest you hold that allows you to explore for, develop, and produce oil and gas.

Participating area means those committed tracts or portions of those committed tracts within the unit area that contain a well meeting the productivity criteria specified in the unit agreement.

Primary target means the principal geologic formation that you intend to develop and produce.

Producible interval means any pool, deposit, zone, or portion thereof capable of producing oil or gas.

Record title means legal ownership of an oil and gas lease recorded in BLM's records.

Tract means land that may be included in an NPR–A oil and gas unit agreement and that may or may not be in a Federal lease.

Unit agreement means a BLM-approved agreement to cooperate in exploring, developing, operating and sharing in production of all or part of an oil or gas pool, field or like area, including at least one NPR–A lease, without regard to lease boundaries and ownership.

Unit area means all tracts committed to a BLM-approved unit. Tracts not committed to the unit, even though they

may be within the external unit boundary, are not part of the unit area.

Unit operations are all activities associated with exploration, development drilling, and production operations the unit operator(s) conducts on committed tracts.

General

§ 3137.10 What benefits do I receive for entering into a unit agreement?

(a) Each individual tract committed to the unit agreement meets its full performance obligation if one or more tracts in the unit meets the development or production requirements;

(b) Production from a well that meets the productivity criteria (*see* § 3137.82 of this subpart) under the unit agreement extends the term of all NPR–A leases committed to the unit agreement as provided in § 3137.111 of this subpart;

(c) You may drill within the unit without regard to certain lease restrictions, such as lease boundaries within the unit and spacing offsets; and

(d) You may consolidate operations and permitting and reporting requirements.

Application

§ 3137.15 If the Federal lands constitute less than 10 percent of the lands in the proposed unit area, is the unit agreement subject to Federal regulations or approval?

If the Federal lands constitute less than 10 percent of the lands in the proposed unit area—

(a) You may use a unit agreement approved by the State and/or a native corporation;

(b) BLM will authorize commitment of the Federal lands to the unit if it determines that the unit agreement protects the public interest; or

(c) As unit operator you may ask BLM to approve and administer the unit. If BLM agrees to approve and administer the unit, you must follow, and BLM will administer, the regulations in this subpart and 43 CFR part 3160.

§ 3137.20 Is there a standard unit agreement form?

There is no standard unit agreement form. BLM will accept any unit agreement format if it protects the public interest and includes the mandatory terms required in § 3137.21 of this subpart.

§ 3137.21 What must I include in an NPR–A unit agreement?

(a) Your NPR–A unit agreement must include—

(1) A description of the unit area and any geologic and engineering factors upon which you are basing the area;

(2) Initial and continuing development obligations (see §§ 3137.40 and 3137.41 of this subpart);

(3) The proposed participating area size and proposed well locations (see § 3137.80(b) of this subpart);

(4) A provision that acknowledges BLM's authority to set or modify the quantity, rate, and location of development and production; and

(5) Any optional terms which are authorized in § 3137.50 of this subpart you choose to include in the unit agreement.

(b) You must include in the unit agreement any additional terms and conditions that result from consultation with BLM. After your initial application, BLM may request additional supporting documentation.

§ 3137.22 What are the size and shape requirements for a unit area?

(a) The unit area must—

(1) Consist of tracts, each of which must be contiguous to at least one other tract in the unit, that are located so that you can perform operations and production in an efficient and logical manner; and

(2) Include at least one NPR–A lease.

(b) BLM may limit the size and shape of the unit considering the type, amount and rate of the proposed development and production and the location of the oil or gas.

§ 3137.23 What must I include in my NPR-A unitization application?

Your unitization application to BLM must include—

(a) The proposed unit agreement;

(b) A map showing the proposed unit area;

(c) A list of committed tracts including, for each tract, the—

(1) Legal land description and acreage;

(2) Names of persons holding record title interest;

(3) Names of persons owning operating rights; and

(4) Name of the unit operator.

(d) You must certify—

(1) That you invited all owners of oil and gas rights (leased or unleased) and lease interests (record title and operating rights) within the external boundary of the unit area described in the application to join the unit;

(2) That there are sufficient tracts committed to the unit agreement to reasonably operate and develop the unit area;

(3) The commitment status of all tracts within the area proposed for unitization; and

(4) That you accept unit obligations under § 3137.60 of this subpart.

(e) Evidence of acceptable bonding;

(f) A discussion of reasonably foreseeable and significantly adverse effects on the surface resources of NPR–A and how unit operations may reduce impacts compared to individual lease operations; and

(g) Other documentation BLM may request. BLM may require additional copies of maps, plats, and other similar exhibits.

§ 3137.24 Why would BLM reject a unit agreement application?

BLM will reject a unit agreement application—

(a) That does not address all mandatory terms, including those required under § 3137.21(b) of this subpart;

(b) If the unit operator—

(1) Has an unsatisfactory record of complying with applicable laws, regulations, the terms of any lease or permit, or the requirements of any notice or order; or

(2) Is not qualified to operate within NPR–A under applicable laws and regulations;

(c) That does not conserve natural resources;

(d) That is not in the public interest;

(e) That does not comply with any special conditions in effect for any part of the NPR–A that the unit or any lease subject to the unit would affect; or

(f) That does not comply with the requirements of this subpart.

§ 3137.25 How will the parties to the unit know if BLM approves the unit agreement?

BLM will notify the unit operator in writing when it approves or disapproves the proposed unit agreement. The unit operator must notify, in writing, all parties to the unit agreement within 30 calendar days after receiving BLM's notice of approval or disapproval.

§ 3137.26 When is a unit agreement effective?

The unit agreement is effective on the date BLM approves it.

§ 3137.27 What effect do subsequent contracts or obligations have on the unit agreement?

No subsequent contract or obligation—

(a) Modifies the terms or conditions of the unit agreement; or

(b) Relieves the unit operator of any right or obligation under the unit agreement.

§ 3137.28 What oil and gas resources of committed tracts does the unit agreement include?

A unit agreement includes all oil and gas resources of committed tracts unless

BLM approves unit agreement terms to the contrary pursuant to § 3137.50 of this subpart.

Development

§ 3137.40 What initial development obligations must I define in a unit agreement?

Your unit agreement must define—

(a) The number of wells you anticipate will be necessary to assess the reservoir adequately;

(b) A primary target for each well;

(c) A schedule for starting and completing drilling operations for each well; and

(d) The time between starting operations on a well to the start of operations on the next well.

§ 3137.41 What continuing development obligations must I define in a unit agreement?

A unit agreement must obligate the operator to a program of exploration and development (see § 3137.71) that, after completion of the initial obligations—

(a) Meets or exceeds the rate of non-unit operations in the vicinity of the unit; and

(b) Represents an investment proportionate to the size of the area covered by the unit agreement.

Optional Terms

§ 3137.50 What optional terms may I include in a unit agreement?

BLM may approve the following optional terms for a unit agreement if they promote additional development or enhanced production potential—

(a) Limiting the unit agreement to certain formations and their intervals;

(b) Multiple unit operators (see § 3137.51 of this subpart);

(c) Allowing modification of the unit agreement terms if less than 100 percent of the parties to the unit agreement (see § 3137.52 of this subpart) agree to the modification; or

(d) Other terms that BLM determines will promote the greatest economic recovery of oil and gas consistent with applicable law.

§ 3137.51 Under what conditions does BLM permit multiple unit operators?

BLM permits multiple unit operators only if the unit agreement defines—

(a) The conditions under which additional unit operators are acceptable;

(b) The responsibilities of the different operators, including obtaining BLM approvals, reporting, paying Federal royalties and conducting operations;

(c) Which unit operators are obligated to ensure bond coverage for each NPR–A lease in the unit;

(d) The consequences if one or more unit operators defaults. For example, if an operator defaults, the unit agreement would list which unit operators would conduct that operator's operations and ensure bonding of those operations; and

(e) Which unit operator is responsible for unit obligations not specifically assigned in the unit agreement.

§ 3137.52 How may I modify the unit agreement?

(a) You may modify a unit agreement if—

(1) All current parties to the unit agreement agree to the modification; or

(2) You meet the requirements of the modification provision in the unit agreement. The modification provision must identify which parties, and what percentage of those parties, must consent to each type of modification.

(b) You must submit to BLM an application for modification. The application must include the following—

(1) The operator must certify that the necessary parties have agreed to the modification; and

(2) If the unit agreement modification alters the current allocation schedule, you must submit to BLM both a—

(i) Description of the new allocation methodology; and

(ii) New allocation schedule.

(c) A modification is not effective unless BLM approves it. After BLM approves the modification, it is effective retroactively to the date you filed a complete application for modification. However, BLM may approve a different effective date if you request it and provide acceptable justification.

(d) BLM will reject modifications that do not comply with BLM regulations or applicable law.

Unit Agreement Operating Requirements

§ 3137.60 As the unit operator, what are my obligations?

As the unit operator—

(a) You must comply with the terms and conditions of the unit agreement, Federal laws and regulations, lease terms and stipulations, and BLM notices and orders;

(b) You must provide to BLM evidence of acceptable bonding. Acceptable bonding means a bond in an amount which is no less than the sum of the individual Federal bonding requirements for each of the NPR–A leases committed to the unit. You may also meet this requirement if you add the unit operator as a principal to lease bonds to reach the required amount; and

(c) The bond must be payable to the Secretary of the Interior.

§ 3137.61 How do I change unit operators?

(a) To change unit operators, the new unit operator must submit to BLM—

(1) Statements that—

(i) It accepts unit obligations; and

(ii) The percentage of required interest owners consented to a change of unit operator; and

(2) Evidence of acceptable bonding (*see* § 3137.60(b) of this subpart).

(b) The effective date of the change in unit operator is the date BLM approves the new unit operator.

§ 3137.62 What are my liabilities as a former unit operator?

You are responsible for all duties and obligations of the unit agreement that accrued while you were unit operator up to the date BLM approves a new unit operator.

§ 3137.63 What are my liabilities after BLM approves me as the new unit operator?

(a) After BLM approves the change in unit operator, you, as the new unit operator, assume full liability, jointly and severally with the record title and operating rights owners, except as otherwise provided in paragraph (c) of this section and to the extent permitted by law, for—

(1) Compliance with the terms and conditions of the unit agreement, Federal laws and regulations, lease terms and stipulations, and BLM notices and orders;

(2) Plugging unplugged wells and reclaiming unreclaimed facilities that were installed or used before the effective date of the change in unit operator (this liability is joint and several with the former unit operator); and

(3) Those liabilities accruing during the time you are unit operator.

(b) Your liability includes, but is not limited to—

(1) Rental and royalty payments;

(2) Protecting the unit from loss due to drainage as provided in § 3137.64 of this subpart;

(3) Well plugging and abandonment;

(4) Surface reclamation;

(5) All environmental remediation or restoration required by law, regulations, lease terms, or conditions of approval; and

(6) Other requirements related to unit operations.

(c) Your liability for royalty and other payments on the unit is limited by section 102(a) of the Federal Oil and Gas Royalty Management Act of 1982, as amended (30 U.S.C. 1712(a)).

§ 3137.64 As a unit operator, what must I do to prevent or compensate for drainage?

You must prevent uncompensated drainage of oil and gas from unit land

by wells on land not subject to the unit agreement. Permissible means of satisfying the obligation include—

(a) Drilling a protective well if it is economically feasible. For this subpart, *economically feasible* means producing a sufficient quantity of oil or gas from a protective well in the unit for a reasonable profit above the cost of drilling, completing and operating the protective well;

(b) Paying compensatory royalty;

(c) Forming other agreements, or modifying existing agreements, that allow the tracts committed to the unit agreement to share in production after the effective date of the new or modified agreement; or

(d) BLM may require additional measures to prevent uncompensated drainage.

Development Requirements

§ 3137.70 What must I do to meet initial development obligations?

(a) To meet initial development obligations by the time specified in your unit agreement you must—

(1) Drill the required test well(s) to the primary target;

(2) Drill at least one well that meets the productivity criteria (*see* § 3137.82 of this subpart); or

(3) Establish, to BLM's satisfaction, that further drilling to meet the productivity criteria is unwarranted or impracticable.

(b) You must certify to BLM that you met initial development obligations no later than 60 calendar days after meeting the obligations. BLM may require you to supply documentation that supports your certification.

§ 3137.71 What must I do to meet continuing development obligations?

(a) Once you meet initial development obligations, you must perform additional development. Work you did before meeting initial development obligations is not continuing development. Continuing development includes the following operations—

(1) Drilling, testing, or completing additional wells to the primary target or other unit formations;

(2) Drilling or completing additional wells that establish production of oil and gas;

(3) Recompleting wells or other operations that establish new unit production; or

(4) Drilling existing wells to a deeper target.

(b) No later than 90 calendar days after meeting initial development obligations, submit to BLM a plan that describes how you will meet continuing development obligations. You must submit to BLM updated continuing obligation plans as soon as you determine that, for whatever reason, the plan needs amending.

(1) If you have drilled a well that meets the productivity criteria, your plan must describe the activities to fully develop the oil and gas field.

(2) If you fulfilled your initial development obligations, but did not establish a well that meets the productivity criteria, your plan must describe the further actual or constructive drilling operations you will conduct.

§ 3137.72 What if reasons beyond my control prevent me from meeting the initial or a continuing development obligation by the time the unit agreement specifies?

(a) If reasons beyond your control prevent you from meeting the initial or a continuing development obligation by the time specified in the unit agreement, you may apply to BLM for an extension of time for meeting those obligations. You must submit the request for an extension of time before the date the obligation is due to be met. In the application-

(1) State the obligation for which you are requesting an extension;

(2) List the reasons beyond your control that prevent you from performing the obligation; and

(3) State when you expect the reasons beyond your control to terminate.

(b) BLM will grant an extension of time to meet initial or continuing development obligations if we determine that-

(1) The extension encourages the greatest ultimate recovery of oil or gas or it is in the interest of conservation; and

(2) The reasons beyond your control prevent you from performing the initial or a continuing development obligation.

(c) The extension of time for performing the initial or a continuing development obligation will continue for so long as the conditions giving rise to the extension continue to exist.

§ 3137.73 What will BLM do after I submit a plan to meet continuing development obligations?

Within 30 calendar days after receiving your proposed plan, BLM will notify you in writing that we—

(a) Approved your plan;

(b) Rejected your plan and explain why. This will include an explanation of how you should correct the plan to come into compliance; or

(c) Have not acted on the plan, explaining the reasons and when you can expect a final response.

§ 3137.74 What must I do after BLM approves my continuing development obligations plan?

No later than 90 calendar days after BLM's approval of your plan submitted under

3137.71(b), you must certify to BLM that you started operations to fulfill your continuing development obligations. BLM may require you to—

(a) Supply documentation to support your certification; and

(b) Submit periodic reports that demonstrate continuing development.

§ 3137.75 May I perform additional development outside established participating areas to fulfill continuing development obligations?

You may perform additional development either within or outside a participating area, depending on the terms of the unit agreement.

§ 3137.76 What happens if I do not meet a continuing development obligation?

(a) After you establish a participating area, if you do not meet a continuing development obligation and BLM has not granted you an extension of time to meet the obligation, the unit contracts. This means that—

(1) All areas within the unit that do not have participating areas established are eliminated from the unit. Any eliminated areas are subject to their original lease terms; and

(2) Only established participating areas, whether they are actually producing or not, remain in the unit.

(b) Units contract effective the first day of the month after the date on which the unit agreement required the continuing development obligations to begin.

(c) If you do not meet a continuing development obligation before you establish a participating area, the unit terminates (*see* § 3137.132 of this subpart).

Participating Areas

§ 3137.80 What are participating areas and how do they relate to the unit agreement?

(a) Participating areas are those committed tracts or portions of those committed tracts within the unit area that contain a well meeting the productivity criteria specified in the unit agreement.

(b) You must include the proposed participating area size in the unit agreement for planning purposes and to aid in the mitigation of reasonably foreseeable and significantly adverse effects on NPR–A surface resources. The unit agreement must define the proposed participating areas. Your proposed participating area may be

limited to separate producible intervals or areas.

(c) At the time you meet the productivity criteria discussed in § 3137.82 of this subpart, you must delineate those participating areas.

§ 3137.81 What is the function of a participating area?

(a) The function of a participating area is to allocate production to each committed tract within a participating area. For royalty purposes, BLM allocates to each committed tract within the participating area in the same proportion as that tract's surface acreage in the participating area to the total acreage in the participating area.

(b) For exploratory and primary recovery operations, BLM will consider gas cycling and pressure maintenance wells when establishing participating area boundaries.

(c) For secondary and tertiary recovery operations, BLM will consider all wells that contribute to production when establishing participating area boundaries.

§ 3137.82 What are productivity criteria?

(a) Productivity criteria are characteristics of a unit well that warrant including a defined area surrounding the well in a participating area. The unit agreement must define these criteria for each separate producible interval. You must be able to determine whether you meet the criteria when the well is drilled and you complete well testing, after a reasonable period of time to analyze new data.

(b) To meet the productivity criteria, the well must indicate future production potential sufficient to pay for the costs of drilling, completing, and operating the well on a unit basis.

(c) BLM will consider wells that contribute to unit production (*e.g.*, pressure maintenance, gas cycling) when setting the participating area boundaries as provided in § 3137.81(b) and (c) of this subpart.

§ 3137.83 What establishes a participating area?

The first well you drill meeting the productivity criteria after the unit agreement is formed establishes an initial participating area. When you establish an initial participating area, lands that contain previously existing wells in the unit meeting the productivity criteria (see § 3137.82 of this subpart), will—

(a) Be added to that initial participating area as a revision, if the well is completed in the same producible interval; or

(b) Become a separate participating area, if the well is completed in a different producible interval (see also § 3137.88 of this subpart for wells that do not meet the productivity criteria).

§ 3137.84 What must I submit to BLM to establish a new participating area, or modify an existing participating area?

To establish a new participating area or modify an existing participating area, you must submit to BLM a—

(a) Statement that—

(1) The well meets the productivity criteria (see § 3137.82 of this subpart), necessary to establish a new participating area. You must submit information supporting your statement; or

(2) Explains the reasons for modifying an existing participating area. You must submit information supporting your explanation;

(b) Map showing the new or revised participating area and acreage; and

(c) Schedule that establishes the production allocation for each NPR-A lease or tract, and each record title holder and operating rights owner in the participating area. You must submit a separate allocation schedule for each participating area.

§ 3137.85 What is the effective date of a participating area?

(a) The effective date of an initial participating area is the first day of the month in which you complete a well meeting the productivity criteria, but no earlier than the effective date of the unit.

(b) The effective date of a modified participating area is the earlier of the first day of the month in which you—

(1) Complete a new well meeting the productivity criteria; or

(2) Should have known you needed to revise the allocation schedule.

§ 3137.86 What happens to a participating area when I obtain new information demonstrating that the participating area should be larger or smaller than previously determined?

(a) If you obtain new information demonstrating that the participating area should be larger than BLM previously determined, within 60 calendar days of obtaining the information, you must—

(1) File a statement, map and revised production allocation schedule under § 3137.84 of this subpart requesting addition to the participating area of all committed tracts or portions of committed tracts in the unit area that meet the productivity criteria;

(2) If the proposed expanded participating area is outside the existing unit boundaries, invite all owners of oil and gas rights (leased or unleased) and lease interests (record title and operating rights) in such additional land to join the unit. If the owners of oil and gas rights in any tract of such land join the unit, you must submit to BLM—

(i) An application to enlarge the unit to include the expanded area;

(ii) A map showing the expanded area of the unit and the information with respect to each additional committed tract you proposed to add to the unit specified in § 3137.23(c) of this subpart; and

(iii) A revised allocation schedule; and

(3) If any additional committed tract or tracts are added to the unit under paragraph (a)(2) of this section, you must file a statement, map and revised production allocation schedule under § 3137.84 of this subpart requesting addition to the participating area of all such committed tracts or portions of such committed tracts in the unit area meeting the productivity criteria.

(b) If you obtain information demonstrating that the participating area should be smaller than previously determined, within 60 calendar days of obtaining the information, you must file a statement, map and revised production allocation schedule under § 3137.84 of this subpart requesting removal from the participating area of all land that does not meet the productivity criteria.

§ 3137.87 What must I do if there are unleased Federal tracts in a participating area?

If there are unleased Federal tracts in a participating area, you must—

(a) Include the unleased Federal tracts in the participating area, even though BLM will not share in unit costs;

(b) Allocate production for royalty purposes as if the unleased Federal tracts were leased and committed to the unit agreement under § 3137.100 of this subpart;

(c) Admit Federal tracts leased after the effective date of the unit agreement into the unit agreement on the date the lease is effective; and

(d) Submit to BLM revised maps, a list of committed leases, and allocation schedules that reflect the commitment of the newly leased Federal tracts to the unit.

§ 3137.88 What happens when a well outside a participating area does not meet the productivity criteria?

If a well outside any of the established participating area(s) does not meet the productivity criteria, all operations on that well are non-unit operations and we will not revise the participating area. You must notify BLM within 60 calendar days after you determine a well

does not meet the productivity criteria. You must conduct non-unit operations under the terms of the underlying lease or other federally-approved cooperative oil and gas agreements.

§ 3137.89 How does production allocation occur from wells that do not meet the productivity criteria?

(a) If a well that does not meet the productivity criteria was drilled before the unit was formed, the production is allocated on a lease or other federally-approved oil and gas agreement basis. You must pay and report the royalties from any such well either as specified in the underlying lease or other federally-approved oil and gas agreements.

(b) If you drilled a well after the unit was formed and the well is completed within an existing participating area, the production becomes a part of that participating area production even if it does not meet the productivity criteria. BLM may require the participating area to be revised under § 3137.84 of this subpart.

(c) If a well not meeting the productivity criteria is outside a participating area, the production is allocated as provided in paragraph (a) of this section.

§ 3137.90 Who must operate wells that do not meet the productivity criteria?

(a) If a well not meeting the productivity criteria was drilled before the unit was formed and is not included in the participating area, the operator of the well at the time the unit was formed may continue as operator.

(b) As unit operator, you must continue to operate wells drilled after unit formation not meeting the productivity criteria unless BLM approves a change in the designation of operator for those wells.

§ 3137.91 When will BLM allow a well previously determined to be a non-unit well to be used in establishing or modifying a PA?

If you, as the unit operator, complete sufficient work so that a well BLM previously determined to be a non-unit well now meets the productivity criteria, you must demonstrate this to BLM within 60 calendar days after you determine that the well meets the productivity criteria. You must then modify an existing participating area or establish a new participating area (see § 3137.84 of this subpart).

§ 3137.92 When does a participating area terminate?

(a) After contraction under § 3137.76 of this subpart, a participating area terminates 60 calendar days after BLM notifies you that there is insufficient production to meet the operating costs of that production, unless you show that within 60 calendar days after BLM's notification—

(1) Your operations to restore or establish new production are in progress; and

(2) You are diligently pursuing oil or gas production.

(b) If you demonstrate to BLM that reasons beyond your control prevent you, despite reasonable diligence, from meeting the requirements in paragraphs (a)(1) and (a)(2) of this section within 60 calendar days after BLM notifies you that there is insufficient production to meet the operating costs of that production, BLM will extend the period of time to start those operations.

Production Allocation

§ 3137.100 How must I allocate production to the United States when a participating area includes unleased Federal lands?

(a) When a participating area includes unleased Federal lands, you must allocate production as if the unleased Federal lands were leased and committed to the unit agreement (*see* §§ 3137.80 and 3137.81 of this subpart). The obligation to pay royalty for production attributable to unleased Federal lands accrues from the later of the date the—

(1) Committed leases in the participating area that includes unleased Federal lands receive a production allocation; or

(2) Previously leased tracts within the participating area become unleased.

(b) The royalty rate applicable to production allocated to unleased Federal lands is the greater of 12½ percent or the highest royalty rate for any lease committed to the unit.

(c) The value of the production must be determined under the Minerals Management Service's oil and gas product value regulations at 30 CFR part 206.

Obligations and Extensions

§ 3137.110 Do the terms and conditions of a unit agreement modify Federal lease stipulations?

A unit agreement does not modify Federal lease stipulations.

§ 3137.111 When will BLM extend the primary term of all leases committed to a unit agreement?

(a) If the unit operator requests it, BLM will extend the primary term of all NPR–A leases committed to a unit agreement if, from anywhere in the unit area, there is—

(1) Actual production from a well that meets the productivity criteria;

(2) Actual or constructive drilling operations; or

(3) Actual or constructive reworking operations.

(b) BLM will extend all NPR–A leases committed to the unit, as provided in the following table, for the following types of operations from any lease committed to the unit—

Type of operations	Length of extension	Additional extension
(1) Actual production	As long as there is production from a well in the unit that meets the productivity criteria.	Does not apply.
(2) Actual or constructive drilling operations.	Up to three years for an initial extension	Up to three more years if you demonstrate reasonable diligence and reasonable monetary expenditures in carrying out the approved drilling or reworking operations during the initial extension.
(3) Actual or constructive reworking operations.	Up to three years for an initial extension	Up to three more years if you demonstrate reasonable diligence and reasonable monetary expenditures in carrying out the approved drilling or reworking operations during the initial extension.

§ 3137.112 What happens if I am prevented from performing actual or constructive drilling or reworking operations?

(a) If you demonstrate to BLM that reasons beyond your control prevent you, despite reasonable diligence, from starting actual or constructive drilling, reworking, or completing operations, BLM will extend all committed NPR–A leases as if you were performing constructive or actual drilling or reworking operations. You are limited to two extensions under this section.

(b) You must resume actual or constructive drilling or reworking operations when conditions permit. If you do not resume operations—

(1) BLM will cancel the extension; and

(2) The unit terminates (*see* § 3137.131 of this subpart).

Change in Ownership

§ 3137.120 As a transferee of an interest in a unitized NPR–A lease, am I subject to the terms and conditions of the unit agreement?

As a transferee of an interest in an NPR–A lease that is included in a unit agreement, you are subject to the terms and conditions of the unit agreement.

Unit Termination

§ 3137.130 Under what circumstances will BLM approve a voluntary termination of the unit?

BLM will approve the voluntary termination of the unit at any time—

(a) Before the unit operator discovers production sufficient to establish a participating area; and

(b) The unit operator submits to BLM certification that at least 75 percent of the operating rights owners in the unit agreement, on a surface acreage basis, agree to the termination.

§ 3137.131 What happens if the unit terminated before the unit operator met the initial development obligations?

If the unit terminated before the unit operator met the initial development obligations, BLM's approval of the unit agreement is revoked. You, as lessee, forfeit all further benefits, including extensions and suspensions, granted any NPR–A lease as a result of having been committed to the unit. Any lease that BLM extended as a result of being committed to the unit would expire unless it qualified for an extension under § 3135.1–5 of this part.

§ 3137.132 What if I do not meet a continuing development obligation before I establish any participating area in the unit?

If you do not meet a continuing development obligation before you establish any participating area, the unit terminates automatically. Termination is effective the day after you did not meet a continuing development obligation.

§ 3137.133 After participating areas are established, when does the unit terminate?

After participating areas are established, the unit terminates when the last participating area of the unit terminates (see § 3137.92 of this subpart).

§ 3137.134 What happens to committed leases if the unit terminates?

(a) If the unit terminates, all committed NPR–A leases return to individual lease status and are subject to their original provisions.

(b) An NPR–A lease that has completed its primary term on or before the date the unit terminates expires unless it qualifies for extension under § 3135.1–5 of this part.

§ 3137.135 What are the unit operator's obligations after unit termination?

Within three months after unit termination, the unit operator must submit to BLM for approval a plan and schedule for mitigating the impacts resulting from unit operations. The plan must describe in detail planned plugging and abandonment and surface restoration operations. The unit operator must then comply with the BLM-approved plan and schedule.

Appeals

§ 3137.150 How do I appeal a decision that BLM issues under this subpart?

(a) You may file for a State Director Review (SDR) of a decision BLM issues under this subpart. Part 3160, subpart 3165 of this title contains regulations on SDR; or

(b) If you are adversely affected by a BLM decision under this subpart you may directly appeal the decision under parts 4 and 1840 of this title.

7. Add a new subpart 3138 to part 3130 to read as follows:

Subpart 3138—Subsurface Storage Agreements in the National Petroleum Reserve–Alaska (NPR–A)

Sec.

3138.10 When will BLM enter into a subsurface storage agreements in NPR–A covering federally-owned lands?
3138.11 How do I apply for a subsurface storage agreement?
3138.12 What must I pay for storage?

§ 3138.10 When will BLM enter into a subsurface storage agreement in NPR–A covering federally-owned lands?

BLM will enter into a subsurface storage agreement in NPR–A covering federally-owned lands to allow you to use either leased or unleased federally-owned lands for the subsurface storage of oil and gas, whether or not the oil or gas you intend to store is produced from federally-owned lands, if you demonstrate that storage is necessary to—

(a) Avoid waste; or

(b) Promote conservation of natural resources.

§ 3138.11 How do I apply for a subsurface storage agreement?

(a) You must submit an application to BLM for a subsurface storage agreement that includes—

(1) The reason for forming a subsurface storage agreement;

(2) A description of the area you plan to include in the subsurface storage agreement;

(3) A description of the formation you plan to use for storage;

(4) The proposed storage fees or rentals. The fees or rentals must be based on the value of the subsurface storage, injection, and withdrawal volumes, and rental income or other income generated by the operator for letting or subletting the storage facilities;

(5) The payment of royalty for native oil or gas (oil or gas that exists in the formation before injection and that is produced when the stored oil or gas is withdrawn);

(6) A description of how often and under what circumstances you and BLM intend to renegotiate fees and payments;

(7) The proposed effective date and term of the subsurface storage agreement;

(8) Certification that all owners of mineral rights (leased or unleased) and lease interests have consented to the gas storage agreement in writing;

(9) An ownership schedule showing lease or land status;

(10) A schedule showing the participation factor for all parties to the subsurface storage agreement; and

(11) Supporting data (geologic maps showing the storage formation, reservoir data, etc.) demonstrating the capability of the reservoir for storage.

(b) BLM will negotiate the terms of a subsurface storage agreement with you, including bonding, and reservoir management.

(c) BLM may request documentation in addition to that which you provide under paragraph (a) of this section.

§ 3138.12 What must I pay for storage?

You must pay any combination of storage fees, rentals, or royalties to which you and BLM agree. The royalty you pay on production of native oil and gas from leased lands will be the royalty required by the underlying lease(s).

PART 3160—ONSHORE OIL AND GAS OPERATIONS

8. Revise the authority citation for part 3160 to read as follows:

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; and 43 U.S.C. 1732(b), 1733 and 1740.

9. Revise 3160.0–1 to read as follows:

§ 3160.0–1 Purpose.

The regulations in this part govern operations associated with the exploration, development and production of oil and gas deposits from—

(a) Leases issued or approved by the United States;

(b) Restricted Indian land leases; and

(c) Those leases under the jurisdiction of the Secretary of the Interior by law or administrative arrangement including the National Petroleum Reserve–Alaska (NPR–A). However, provisions relating to suspension and royalty reductions contained in subpart 3165 of this part do not apply to the NPR–A.

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Federal Register

Thursday,
April 11, 2002

Part VI

Department of the Treasury

Fiscal Service

31 CFR Part 210

Federal Government Participation in the Automated Clearing House; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

RIN 1510–AA84

Federal Government Participation in the Automated Clearing House

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule and interim rule with request for comment.

SUMMARY: These rules amend our regulation which governs the use of the Automated Clearing House (ACH) system by Federal agencies. We adopt, with some exceptions, the ACH rules (ACH Rules) developed by NACHA—The Electronic Payments Association (NACHA)—as the rules governing the use of the ACH system by Federal agencies.

This document includes two separate rulemaking actions. First, we're issuing a final rule to permit the conversion of checks to ACH debit entries at Federal agency (agency) points-of-purchase and at lockbox locations to which payments to agencies are mailed or delivered. The final rule also addresses the origination by agencies of ACH debit entries authorized over the Internet. We previously published a notice of proposed rulemaking requesting comment on the conversion of checks at points-of-purchase and lockboxes, and the origination of ACH debit entries authorized over the Internet. The final rule is discussed in Part I of this document.

Second, we're issuing an interim rule to address other changes that NACHA has made to the ACH Rules during the past year. We are requesting comment on all aspects of the interim rule, which is discussed in Part II of this document.

DATES: Both the final rule and the interim rule are effective May 13, 2002. Comments on the interim rule must be received by June 10, 2002. The incorporation by reference of the publication listed in the rules is approved by the Director of the Federal Register as of May 13, 2002.

ADDRESSES: You can download these rules at the following World Wide Web address: *http://www.fms.treas.gov/ach.* You may also inspect and copy these rules at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 1428, Main Treasury Building, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Before visiting, you must call (202) 622–0990 for an appointment.

You may send comments on the interim rule electronically to the following address: *210comments@fms.treas.gov.* You may also mail your comments to John Galligan, Director, Cash Management Policy and Planning Division, Financial Management Service, U.S. Department of the Treasury, Room 420, 401 14th Street, SW., Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT: Walt Henderson, Senior Financial Program Specialist, at (202) 874–6705 or *walt.henderson@fms.treas.gov*; Natalie H. Diana, Senior Attorney, at (202) 874–6680 or *natalie.diana@fms.treas.gov*; or John Galligan, Director, Cash Management Policy and Planning Division, at (202) 874–6590 or *john.galligan@fms.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background

Part 210 governs the use of the ACH system by Federal agencies (agencies). The ACH system is a nationwide electronic fund transfer (EFT) system that provides for the inter-bank clearing of credit and debit transactions and for the exchange of information among participating financial institutions. Part 210 incorporates the ACH Rules adopted by NACHA, with certain exceptions. From time to time we amend Part 210 in order to address changes that NACHA periodically makes to the ACH Rules.

We're issuing a final rule addressing the conversion of checks to ACH debit entries at agency points-of-purchase and at lockbox locations where payments to agencies are sent and the origination by agencies of ACH debit entries authorized over the Internet. Last year we published a notice of proposed rulemaking requesting comment on these issues. The final rule is discussed in Part I of this document.

We're also issuing an interim rule amending part 210 to reflect certain changes that NACHA has made to the ACH Rules since the publication of NACHA's 2001 rule book. The interim rule addresses four topics: (1) Affidavit and electronic communication issues; (2) reinitiation of entries; (3) electronic authorization; and (4) electronic terminals. We are requesting comment on all of these topics, which are discussed in Part II of this document.

I. Final Rule

On April 12, 2001, we published a notice of proposed rulemaking (NPRM) to amend Part 210 in order to address the conversion of checks to ACH debit entries at agency points-of-purchase and agency lockbox [1] locations, as well as the origination by agencies of ACH debit entries authorized over the Internet. 66 FR 18888. We received 33 comments in response to the proposed rule. Commenting organizations included financial institutions, trade groups, and individuals. A significant number of the comments received were in response to our proposal to convert business checks received at point-of-purchase and lockbox locations. A significant number of comments also addressed authorization issues in connection with check conversion transactions.

We are adopting most of the provisions that we proposed without substantive changes. We have, however, modified certain provisions of the proposal in light of the comments we received. The most significant comments are discussed below.

A. Check Conversion Without Written Authorization

Point-of-Purchase Check Conversion

In the NPRM, we requested comment on a framework in which agencies would be permitted to convert checks presented at a point-of-purchase provided that (1) a sign posted at the cash register notifies customers that presenting a completed, signed check for payment constitutes authorization to convert the check and (2) customers also are given a written disclosure that they can retain. We requested input as to whether a posted notice at the point-of-purchase, either alone or in combination with a paper disclosure handed to consumers, is sufficient to ensure that consumers understand that by presenting a check for payment, they are authorizing the conversion of the check to an ACH debit entry. The ACH Rules governing point-of-purchase transactions require the merchant to obtain written authorization from the consumer prior to initiating the transaction. The ACH Rules also require the merchant to provide the consumer with a copy of the authorization and a receipt containing specific, minimum information relating to both the merchant and the transaction.

In the NPRM, we noted that consumer checks converted to ACH debit entries at agency points-of-purchase under our proposed approach would constitute EFTs covered by Regulation E. See Official Staff Commentary to Regulation E, section 205.3(b)–1(v). The authorization requirements of Regulation E are met if a consumer who presents a check at a point-of-purchase

[1] A post office box established by a financial institution for the purpose of receiving and processing paper-based payments to an agency.

receives notice that the transaction will be processed as an EFT and completes the transaction. See Official Staff Commentary, section 205.3(b)–3.

Some commenters expressed support for the ''notice equals authorization'' approach, noting that it is consistent with the Federal Reserve's revised Official Staff Commentary on Regulation E, provided that any notice is prominently displayed for the customer to see. However, a majority of the organizations that commented on this ''notice equals authorization'' approach were opposed to the conversion of checks without first obtaining a separate, written authorization. Many commenters support the signature requirement, believing it best enables the consumer to understand that the transaction will be processed as an EFT. Consumer confusion was cited as a concern presented by the approach we proposed, since authorization requirements for point-of-purchase transactions at agencies would differ from private sector authorization requirements. Several financial institutions also commented that, without the written authorization requirement, customers confused by the transaction would contact their financial institutions, thereby resulting in increased customer inquiries made to Receiving Depository Financial Institutions (RDFIs).

Notwithstanding these concerns, pilot applications of point-of-purchase check conversion at agency locations have demonstrated that obtaining a separate, written authorization from the customer, and providing the customer with a copy of that authorization (as required by the ACH Rules), are major obstacles to the use of this technology. In our pilot programs, it took significantly more time at the point-of-purchase to convert checks to ACH debit entries than to process paper check transactions. The additional time is a result of the need to explain the check conversion process to the customer and the requirement to have the customer sign an authorization. Despite the cost savings to the Federal government of converting checks to ACH debit entries, agencies are reluctant to use any method of payment collection that would result in longer, slower check-out lines.

Although the initial introduction of any new payment technology will naturally generate questions for some period of time, we believe that the public will come to understand and accept check conversion as the use of the technology becomes more widespread. The Federal government's customer base and transaction types are, in some respects, different from private sector retail establishments. For example, most checks are presented for payment at agency locations for mandatory fees, fines, taxes, or other distinct services, or in closed military environments where the payment methods can be easily limited. Our pilots indicate that customers are receptive to check conversion. Moreover, we believe that Regulation E ensures that consumers' interests are protected.

For all these reasons, we do not believe that the lack of current customer familiarity with the check conversion process is a reason to forgo or delay the benefits of moving to a more cost-saving and efficient method of collecting public monies. The use of a ''notice equals authorization'' approach for point-of-purchase check conversion will make the use of this technology attractive to agencies and result in efficiencies for the Federal government. Accordingly, we are modifying in part 210 the ACH Rules governing check conversion to provide that presentment to an agency of a completed and signed check, following notice that the check will be converted, constitutes authorization for the conversion of the check to an ACH debit entry. We are also permitting agencies to use a ''notice equals authorization'' approach to initiate an ACH debit entry to collect a service fee for an entry initiated at a point-of-purchase that has been returned for insufficient funds. This does not create for agencies the authority to impose a service fee; rather, it allows an agency that has the authority to impose such a fee to collect the fee by ACH debit without a written authorization.

In order to address commenters' concerns about potential customer confusion, we have developed standard disclosures that agencies will be required to use for point-of-purchase check conversion. We believe that consistent and uniform disclosure language across agencies will be helpful to customers. The disclosure language that we have developed is designed to help customers understand the conversion process and to advise consumers of the fact that they have rights under Regulation E, as well as to help them identify these transactions on account statements provided by financial institutions. Agencies must ensure that the notice of conversion set forth at appendix A to part 210 (Posted Notice) is posted conspicuously at the cash register, and that the disclosure set forth at appendix B to part 210 (Pamphlet or Brochure) is available from the cashier upon request.

Accounts Receivable (Lockbox) Check Conversion

The NPRM proposed an approach toward lockbox conversion in which an agency could convert all checks received at a lockbox to ACH debit entries if the agency provided prior written notice of this policy to payors. Because the provision of notice would require that agencies redesign and reprint forms, or develop and mail special notices, we requested comment on how useful the notice of lockbox check conversion is for consumers, and how it might best be provided.

At the time we published the NPRM, the ACH Rules required an Originator [2] that wanted to convert checks at a lockbox to provide the consumer with notice of the check conversion policy. This notice had to be provided under one of two scenarios: (1) The consumer authorizes the entry by a writing that is signed or similarly authenticated (''opt-in''); or (2) the consumer is notified that if the consumer does not provide the Originator with written notice not to convert the item, the item will be converted (''opt-out''). The NPRM requested comment on the extent to which (if any) payors would be disadvantaged if their checks were converted without making available this opt-in/opt-out procedure.

In the NPRM, we noted that consumer checks converted to ACH debits at agency lockboxes under our proposed approach would constitute EFTs covered by Regulation E. See Official Staff Commentary to Regulation E, section 205.3(b)–1(v). The authorization requirements of Regulation E are met if a consumer who mails a check to a lockbox receives notice that the transaction will be processed as an EFT and completes the transaction. See Official Staff Commentary, section 205.3(b)–3.

Many of the organizations commenting on lockbox check conversion, primarily large financial institutions, were opposed to FMS'' proposal to eliminate the opt-in or opt-out requirement. Most of these organizations stated that customers would not understand what was happening to their checks if the opt-in/opt-out requirement were eliminated, thereby resulting in increased customer inquiries to financial institutions.

Several organizations commenting on this issue were supportive of the proposal to eliminate the opt-in/opt-out requirement. These organizations indicated that removing the opt-in/opt-

[2] In an ACH debit transaction, the Originator is the person or entity receiving a transfer of funds from a payor's account.

out requirement would streamline the check conversion process because it would eliminate the need for two separate workflows at agency lockbox locations.

Several organizations also responded to our request for comment on whether providing notice to consumers of lockbox check conversion was meaningful. All respondents to this issue indicated that notice is meaningful if the disclosure language is clear, concise, and included on an invoice or on the forms associated with the government service. These respondents explained that a clear and concise notice would improve customers' understanding of the process and thereby reduce the number of customer inquiries made to financial institutions. A few financial institutions recommended that FMS and other Federal agencies utilize public service announcements and magazine and newspaper articles to provide additional notice to consumers of check conversion.

Since we published the NPRM, NACHA has amended the ACH Rules for lockbox check conversion. Under the revised ACH Rules, which become effective on March 15, 2002, presentment of a signed check at a lockbox following notice that the check will be converted constitutes authorization for the conversion of the check. The ACH Rules do not, however, prevent Originators from using an opt-in or opt-out authorization model for lockbox conversion.

Requiring an opt-in/opt-out procedure would impose substantial costs and inefficiencies on the processing of checks at Federal lockboxes. Checks that are eligible for conversion because consumers have consented to conversion would have to be segregated from checks for which consent to convert has not been obtained. This would require the duplication of lockboxes and maintenance of separate processing systems. These costs are likely to offset any cost-savings and efficiencies that would otherwise be available through check conversion. As a result, we are accepting the ACH Rules regarding accounts-receivable consumer check conversion. These rules will allow agencies to convert checks after providing notice of conversion, but would not preclude an agency from using an opt-in/opt-out procedure if it chose to do so.

In order to address commenters' concerns about potential customer confusion, we have developed standard disclosures that agencies will be required to use for lockbox check conversion. Agencies must ensure that the notice of conversion set forth at appendix C to part 210 is provided to payors before their checks are converted. See Section-By-Section Analysis, discussion of § 210.6(h).

B. Conversion of Business Checks

In the NPRM we requested comment on proposed rules that would allow agencies to convert business checks received at points-of-purchase and lockboxes to ACH debit entries. The ACH Rules currently do not allow for the conversion of business checks, and thus do not support Standard Entry Class (SEC) codes appropriate for these transactions. NACHA is in the process of developing proposed changes to the ACH Rules to allow the conversion of business checks to ACH debit entries. However, at this time, it is unclear as to whether these proposed rule changes would be supported by the industry and approved by NACHA's voting membership.

In the NPRM we proposed to require agencies to use the Prearranged Payment and Deposit (PPD) SEC code for business checks converted at lockboxes and the Cash Concentration or Disbursement (CCD) SEC code for business checks converted at the point-of-purchase. We requested comment on the issues raised by using the PPD SEC code for business checks converted at lockboxes, including whether it would be appropriate to extend the consumer and RDFI recredit and adjustment protections [3] to business account-holders whose checks are converted at agency lockboxes and to their RDFIs.

A majority of the commenting organizations expressed concern about the conversion of business checks to ACH debit entries at points-of-purchase and lockbox locations. The common theme was that the conversion of business checks to ACH debit entries may interfere with various cash management tools in place to protect some business accounts and that, as a result, ACH debit entries would be returned and negatively impact business customers. The Association for Financial Professionals (AFP) asked both FMS and NACHA to withdraw any proposals to convert business checks due to the potentially negative impact on corporate cash management. AFP's concern is that converting business checks may limit the effectiveness of controlled disbursement and positive pay systems because reconciliation could not occur between the converted item and a corporation's disbursement files. These systems would expect payments originated as checks to be presented for payment as checks, not as ACH debit entries. It was also noted that there would be a negative impact on automated corporate account reconciliation mechanisms.

Many of the larger financial institutions indicated that in order to facilitate the conversion of business checks to ACH debit entries they would need to engage in extensive system changes so that back-end check processing systems could communicate internally with ACH systems. This would allow items originated by check, and subsequently converted to ACH debit entries, to be recognized as such, interact with various cash management tools, and properly post to business accounts with no negative impact on the business customer.

We recognize that the conversion of business checks issued by large businesses may interfere with cash management tools until financial institution check processing and ACH systems are integrated. However, our check conversion pilot experience indicates that many of the business checks presented at agency points-of-purchase are issued by small businesses with accounts that do not employ these types of cash management tools. Indeed, we believe that it is unlikely that most business checks presented over-the-counter to agencies are drawn on accounts that employ these systems. In its comment letter, NACHA indicated that checks drawn on business accounts with debit blocks and/or positive pay verification may, in all likelihood, involve too cumbersome a check issuance process to be candidates for over-the-counter purchases at merchants and, thus, ACH conversion. Statistics from our check conversion pilot with a large Federal agency support this position. During the two-year pilot with this agency over 10,000 business checks were presented at the point-of-purchase of which 99.86% of these transactions were successfully converted to ACH debit entries.

We do not anticipate that check conversion at agency points-of-purchase, in the manner we plan to use it, is likely to significantly disrupt corporate cash management. Moreover, it is important to note that our rules do not require agencies to use check conversion; rather, the rules provide a legal framework for check conversion for those agencies that wish to use this technology. Therefore, if a particular

[3] The ACH Rules require an RDFI to recredit a consumer's account if the consumer has notified the RDFI of an unauthorized debit within fifteen days after receiving his statement. See ACH Rule 7.6.1. The RDFI may then send an adjustment entry to the ODFI, as long as the adjustment entry is sent within 60 days of the settlement date of the debit at issue. See ACH Rule 7.7.1.

agency receives a significant number of checks issued by large corporations, the agency may choose not to engage in check conversion. FMS will work closely with agencies to implement check conversion technology and will provide guidance to help agencies determine the appropriateness of this technology for various cash flows.

We are aware that, until check and ACH systems are integrated, a debit entry to a business account utilizing a debit filter or positive pay system may be returned. To address this possibility, we are planning to handle debits to business accounts that are returned by generating a paper draft on the account, using the stored check image. These transactions, which are governed by the Uniform Commercial Code, will be settled through the check processing system. We also are aware that authorization issues can arise in connection with converting business checks at points-of-purchase. For example, it is possible that an individual presenting a business check to an agency may not have authority to act with respect to the account on which the check is drawn. We believe that the ACH Rules incorporated in part 210 provide an adequate framework to enable a Receiver [4] to pursue recovery of an unauthorized debit to the Receiver's account.[5] Moreover, we have not found in our pilot programs that Receivers have challenged or attempted to disavow ACH debits resulting from the conversion of business checks.

With regard to lockbox check conversion, we continue to believe, as discussed in the NPRM, that providing for two separate workflows at lockbox locations would be costly and burdensome, and that the full benefits of this technology cannot be realized unless all checks received at lockbox locations are converted. However, we plan to operate lockbox check conversion pilots in such a manner as to minimize the concerns voiced by commenters. For example, we anticipate that alternate payment methods will be made available for any lockbox at which all checks are converted, so that remitters have the option of making payment by ACH credit or another means if they do not want their checks converted. In addition, we will work with agencies to focus check conversion on cash flows consisting of payments from primarily small and medium-sized businesses that are less likely to use sophisticated cash management tools.

Based on the concerns expressed by financial institutions with regard to extending consumer re-credit provisions to business customers, we have determined that it would be more appropriate to use the CCD SEC code rather than the PPD SEC code for business checks converted at lockboxes and points-of-purchase. In order to accommodate the use of appropriate SEC codes at lockboxes, we plan to analyze agency cash flows and implement pilot programs initially only at lockboxes where either consumer checks or business checks (but not both) are sent. By distinguishing consumer lockboxes from business lockboxes, we can ensure that the CCD SEC code is used to convert business checks and the Accounts Receivable Entry (ARC) SEC code is used to convert consumer checks.

C. Other Check Conversion Issues

Although the NPRM did not address the retention of check information and destruction of paper checks converted at lockboxes, we received comments on these issues. Since we published the NPRM, NACHA has amended the ACH Rules for lockbox check conversion. Under the revised ACH Rules, a check is used as a source document to initiate an accounts receivable (lockbox) entry. A check converted to ACH debit entry in this manner at a lockbox is to be copied or imaged. The copied or imaged check information is to be retained for a minimum of 7 years. The original check is to be destroyed no later than 14 calendar days after the settlement date of the accounts receivable entry. This requirement is to protect against the risk that by human error the check (source document), in addition to being presented as an ACH debit entry, might subsequently be entered into the check processing system for payment as a check.

Commenters urged us to adopt these provisions of the ACH Rules. We agree with these comments and are accepting the ACH Rules regarding check retention and destruction as they apply to checks presented by the public for payment at agency lockbox locations. [6]

D. Internet-Initiated ACH Debits

The NPRM proposed to incorporate in Part 210 the ACH Rules that allow the use of the Internet-Initiated Entry (WEB) SEC code to initiate ACH debit entries for purchases made over the Internet, with two exceptions. First, we proposed not to adopt the requirement that Originating Depositary Financial Institutions (ODFIs) establish exposure limits for Originators of Internet-initiated debit entries. Second, we proposed to allow agencies to originate WEB entries to corporate accounts as well as to consumer accounts.

The purpose of establishing exposure limits is to ensure that ODFIs will verify the identity and creditworthiness of their merchant customers and to ensure that the volume and dollar amount of the transactions that merchants originate are appropriate. We do not believe that it would be appropriate for FMS, which functions as an ODFI for agencies, to establish transaction limits for Federal agencies. We also do not believe that such limits are necessary, because the collection of payments by agencies over the Internet does not raise the merchant creditworthiness concerns that have emerged in the private sector. Most respondents were supportive of our position on this issue.

In addition, we proposed to permit agencies to initiate WEB entries to business accounts in order to provide businesses with a convenient and cost-beneficial way to make payments to agencies. Because, under the ACH Rules, the use of the WEB SEC code for an entry signifies that the entry is a debit to a consumer account, allowing agencies to use the WEB code for a debit entry to a business account raises the issue of whether the RDFI can or must provide the business customer with the right of recredit available to consumers under the ACH Rules. See ACH Rule 7.6.1, ACH Rule 7.7.1. We proposed to extend to business Receivers of WEB entries, and their RDFIs, the same re-credit and adjustment rights, respectively, that apply to debits to consumer accounts.

The majority of commenters, primarily large financial institutions and trade associations, were opposed to the use of the WEB SEC code for business entries. Several respondents argued that the WEB SEC code was designed solely for consumer entries and that WEB entries to business accounts would likely be rejected. Additionally, most dissenters were opposed to the extension of re-credit and adjustment rights to business

[4] In an ACH debit transaction, the Receiver is the person or entity making the payment (i.e., the payor) by authorizing a debit to an account. In this document, we may refer to a person or entity making a payment to a Federal agency as a payor, a Receiver, a customer, or a consumer, as appropriate.

[5] For example, under the ACH Rules, the ODFI warrants that a debit entry has been authorized by the Receiver and must provide a copy of the Receiver's authorization upon the RDFI's request. See ACH Rules 2.2.1.1 and 4.1.1.

[6] Checks received at certain Federal lockboxes are subject to court orders mandating the preservation of the original checks. As discussed above, we plan to implement check conversion only at lockboxes where conversion is appropriate in light of the nature of the checks received. We will not implement check conversion at lockboxes where the checks received are subject to court-mandated preservation requirements.

corporate entries. Many commenters wrote that a better approach to this issue is to use standard SEC codes, such as the CCD or Corporate Trade Exchange (CTX), for business Internet entries.

Our pilot experience underscores the importance of the commenters' concerns that operational discrepancies may occur if the WEB SEC code is used for corporate items. Many corporations employ cash management tools on their accounts that would reject and return these entries. In view of this experience and the comments received, and because it appears to be possible to use CCD SEC code for Internet-initiated ACH debits without compromising the efficiency of Internet systems, we will use the WEB SEC code for consumer entries and the CCD SEC code for business entries. Use of the CCD SEC code for business entries means that consumer re-credit provisions will not apply to business entries.

II. Interim Rule

A. Background

As discussed above, part 210 incorporates (with certain exceptions) the ACH Rules, which NACHA periodically updates. Each year NACHA publishes a new rule book that reflects the changes to the ACH Rules that have been approved since the publication of the previous rule book. Part 210 currently provides that any amendment to the ACH Rules, as published in NACHA's 2001 rule book, that takes effect after September 14, 2001, will not apply to Federal government ACH entries unless we publish notice of acceptance of the amendment in the **Federal Register**. 31 CFR 210.3(b)(2). NACHA recently published its 2002 rule book. We're publishing this interim rule in order to incorporate in Part 210 all of the amendments to the ACH Rules that NACHA adopted within the last year, other than those relating to accounts receivable entries, which are addressed in our final rule.

Unlike the final rule discussed in Part I of this document, we have not previously sought comment on the issues addressed in this interim rule. We therefore are requesting comment on all aspects of the interim rule discussed below.

B. Changes to ACH Rules

The ACH Rules published in NACHA's 2002 rule book reflect changes to the ACH Rules published in NACHA's 2001 rule book related to four topics in addition to accounts receivable entries. Those four topics are: (1) Affidavit and electronic communication issues; (2) reinitiation; (3) electronic authorization; and (4) electronic terminals. By amending § 210.2 (d) and § 210.3 (b), we are incorporating these four ACH rule changes into the interim rule.

In order to incorporate these ACH Rule changes in Part 210, the only revision necessary to the current regulation is to replace references to the 2001 rule book with references to the 2002 rule book.

1. Affidavit and Electronic Communication Issues

NACHA has adopted a rule to facilitate the use of electronic agreements and the electronic storage of records in conformance with the Electronic Signatures in Global and National Commerce Act (E-Sign Act). This rule amendment will allow any agreement, authorization, affidavit or other record (e.g., notices, disclosures, etc.) required by the ACH Rules to be executed in an electronic form. It is not a requirement of the ACH Rules that these documents be executed in electronic form; this rule amendment simply provides another option for ACH participants. In addition, this rule amendment would change the term ''affidavit'' to ''written statement under penalty of perjury'' in order to clarify that, for purposes of the ACH Rules, such a declaration need not be notarized. RDFIs, at their option, can continue to use affidavits and/or require notarization. This rule amendment became effective March 15, 2002.

FMS, as well as the Federal government as a whole, supports regulations and policies that facilitate electronic commerce, including those that support the validity of electronic signatures. As a result, we are accepting this change to the ACH Rules.

2. Reinitiation Issues

NACHA has adopted a rule to limit the number of times that an ACH entry returned using Return Reason Code R01 (Insufficient Funds) or R09 (Uncollected Funds) may be reinitiated to a maximum of two reinitiation attempts following the return of the original entry. This limitation applies to all SEC codes except RCK (Re-presented Check Entry), which has a distinct limit. This rule amendment became effective March 15, 2002.

FMS supports the consistency that this change to the ACH Rules brings to ACH return items. As a result, we are accepting this change to the ACH Rules.

3. Electronic Authorization

NACHA has adopted a rule revising the language concerning the similarly authenticated standard for consumer authorizations to be consistent with the recent revisions to the Federal Reserve Board's Official Staff Commentary on Regulation E. This revised language states that electronic authorization that is similarly authenticated by the consumer will satisfy the necessary standards by being in compliance with the requirements of the E-Sign Act. The authorization process chosen must evidence both the consumer's identity and his assent to the transaction. This rule amendment became effective January 1, 2002.

FMS supports consistency between the ACH Rules and Regulation E. As a result, we are accepting this change to the ACH Rules.

4. Terminal Location

Under Regulation E, a point-of-purchase terminal used to capture data electronically for purposes of initiating an EFT constitutes an ''electronic terminal'' even if no access device is used to originate the transaction, such as when a check is used to capture information to initiate a one-time EFT. Therefore, when a check is used as a source document at a point-of-purchase and is run through a terminal to capture the account information from the check (as is the case with the POP entry), the requirements of Regulation E with respect to electronic terminals apply. These requirements include the provision of a receipt for POP entries that includes the terminal location, as well as the inclusion of the terminal location on the consumer's bank account statement, as provided in Regulation E, § 205.9(b)(1)(iv).

NACHA has adopted a rule to require that (1) an Originator of POP entries include information within the POP entry to identify the city and state in which the electronic terminal used for the transaction is located; (2) the Originator include the Terminal City and Terminal State on the receipt provided to the consumer at the point-of-purchase; and (3) RDFIs expand the information provided on the consumer's monthly bank account statement to include the city and state where the terminal is located. This rule amendment became effective January 1, 2002.

We recognize that this rule change, which is necessary to conform to the requirements of Regulation E, provides consumers with useful transaction information. As a result, we are accepting this change to the ACH Rules.

III. Section-by-Section Analysis

Section 210.2(d) [Interim amendment]

We are amending the definition of ''applicable ACH rules'' at § 210.2(d). Current § 210.2(d) defines applicable ACH rules to mean the ACH Rules with an effective date on or before September 14, 2001, as published in Parts II, III, and IV of the ''2001 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network,'' with certain exceptions. We are amending § 210.2(d) to refer to the ACH Rules with an effective date on or before March 15, 2002. The effect of this amendment is that the changes to the ACH rules addressed in our interim rule are incorporated by reference in part 210.

To implement our adoption of a final rule governing accounts receivable check truncation and Internet-initiated debit entries, we are deleting the exceptions in paragraphs (d)(6) (accounts receivable check truncation) and (d)(7) (Internet-initiated debit entries). The deletion of these paragraphs reflects our adoption of the ACH rules governing those transactions, with certain exceptions that are addressed in § 210.2(d)(6) and § 210.6(h). Section 210.2(d)(6) excludes ACH Rule 2.10.2.2 from the definition of applicable ACH rules. ACH Rule 2.10.2.2 requires ODFIs to establish exposure limits for Originators of Internet-initiated debit entries. Section 210.6(h) sets forth the requirements for accounts receivable check truncation by agencies.

Section 210.3(b) [Interim amendment]

We are amending § 210.3(b), ''Incorporation by reference—applicable ACH Rules,'' by replacing the references to the ACH Rules as published in the 2001 rule book with references to the ACH Rules as published in the 2002 rule book.

Section 210.6(g) [Final amendment]

To implement the part of our final rule that addresses the conversion of checks at agency points-of-purchase, we are amending § 210.6, which sets forth the obligations and liabilities of agencies that initiate or receive Government entries. We are adding a new paragraph (g) to address the conversion of checks to ACH debit entries at agency points-of-purchase. Paragraph (g) permits agencies to convert to ACH debit entries both consumer and business checks presented at agency points-of-purchase. The term ''point-of-purchase'' is intended to mean any location where an agency accepts checks as payment in connection with a contemporaneous transaction or any location where an agency cashes checks for employees or the public. Thus, an actual purchase need not take place at a ''point-of-purchase.''

ACH Rule 2.1.2 requires that a Receiver authorize the Originator to initiate an entry to the Receiver's account. In the case of a debit entry to a consumer account, the authorization must be in writing, signed or similarly authenticated by the consumer. ACH Rule 3.4 requires that an Originator provide a Receiver with a copy of the Receiver's authorization for a debit entry initiated to a consumer account. Under § 210.6(g), these requirements are met if the agency posts a notice containing the disclosure set forth at Appendix A and makes available to the customer, in a form that the customer can retain, the disclosure set forth at Appendix B. It is not necessary that the cashier actually hand the customer the Appendix B disclosure; it is sufficient that the disclosure is made available if the customer requests it. Agencies that convert checks at points-of-purchase must use the standard disclosures at Appendices A and B—they may not modify the disclosures except where indicated by brackets.

ACH Rules 3.10 and 4.1.1 require, respectively, that the Originator retain the original or a copy of the Receiver's authorization for two years and that the ODFI provide a copy of the Receiver's authorization to an RDFI upon request. Under § 210.6(g), these requirements can be met by providing a copy of the Receiver's check plus a copy of the notice that was posted at the cash register.

Section 210.6(h) [Final amendment]

To implement the part of our final rule that addresses the conversion of checks at lockboxes, we are adding a new paragraph (h) to *§ 210.6.* Section 210.6(h)(1) allows an agency to originate an accounts receivable entry if the agency has first provided the disclosure set forth at Appendix C to the consumer. Like the point-of-purchase disclosure, Appendix C contains a standard disclosure that agencies may not modify except as indicated by brackets. The disclosure need not appear on the invoice document itself, but should be provided in such a way that the Receiver can be expected to have read the disclosure before sending in a check. For example, it would be appropriate to include the disclosure with remittance instructions.

Section 210.6(h)(2) allows agencies to convert business checks received at a lockbox or dropbox [7] to ACH debit entries using a CCD SEC code. Under section 210.6(h)(2), the authorization requirements of the ACH Rules are met if, and only if, the agency has provided the disclosure set forth in Appendix C prior to converting the check. For purposes of the document retention and availability requirements of ACH Rules 3.10 and 4.1.1, a copy of the notice and a copy of the Receiver's source document together constitute a copy of the authorization.

Section 210.6(i) [Final amendment]

To implement the part of our final rule that addresses the origination of a service fee for returned transactions in connection with conversion of checks at points-of-purchase and lockboxes, we are adding a new subsection (i) to *§ 210.6.* The ACH Rules do not allow merchants to initiate an ACH debit entry to collect a service fee for an entry that has been returned for insufficient funds except where the Receiver has, in writing, authorized the collection of the fee. Section 210.6(i) overrides this restriction for Federal agencies and allows an agency to collect by ACH debit, without the Receiver's written authorization, a one-time service fee in connection with any entry originated by converting a check at a point-of-purchase or lockbox that is returned unpaid. The agency must have provided the disclosures set forth at Appendices A and B (for point-of-purchase entries) or Appendix C (for lockbox entries) in order to collect the service fee by ACH debit. This subsection does not create for agencies the authority to impose a service fee; rather, it allows an agency that has the authority to impose such a fee to collect the fee by ACH debit without a written authorization.

Appendices A, B and C

We are adding appendices A, B and C to the regulation to set forth the disclosures required in our final rule for point-of-purchase check conversion and lockbox check conversion.

IV. Procedural Requirements

Request for Comment on Interim Rule

We invite comment on all aspects of the interim rule.

Request for Comment on Plain Language—Interim and Final Rules

Executive Order 12866 requires each agency in the Executive branch to write regulations that are simple and easy to understand. We invite comment on how

[7] A dropbox is similar to a lockbox except that a payor delivers a payment to a dropbox in person rather than mailing the payment.

to make either the interim rule or the final rule clearer. For example, you may wish to discuss: (1) Whether we have organized the material to suit your needs; (2) whether the requirements of the rules are clear; or (3) whether there is something else we could do to make these rules easier to understand.

Notice and Comment and Effective Date—Interim Rule

We find that good cause exists for issuing the interim rule without prior notice and comments. Under the Administrative Procedure Act, an agency is permitted to issue a rule without prior notice and comment when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest. 5 U.S.C 553(b)(B). We believe that it is important to address the publication of new ACH Rules as quickly as possible in order to mitigate the uncertainty and inconvenience to financial institutions and agencies that would result from a time lag in responding to NACHA's rule changes. When we proposed to address changes to the ACH Rules by reviewing and responding to rule changes on an annual basis, we received many comments expressing concern over the potential consequences of such a time lag.

Those consequences include uncertainty as to the rules governing government ACH transactions, as well as the inability of financial institutions to segregate the processing of those transactions. We have published a notice, and considered the comments received, on those provisions of NACHA's rule changes that we believe are significant or controversial, and we are addressing those rule changes in our final rule.

Executive Order 12866—Interim and Final Rules

The interim and final rules do not meet the criteria for a ''significant regulatory action'' as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

Regulatory Flexibility Act Analysis—Interim and Final Rules

It is hereby certified that the final rule will not have a significant economic impact on a substantial number of small entities. [The conversion to ACH debits of checks remitted by small entities to Federal agencies is not expected to result in increased costs to those entities. Similarly, there should be no economic impact to small entities as a result of allowing Federal agencies to originate ACH debits authorized by small entities over the Internet. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required. Because no notice of proposed rulemaking is required for the interim rule, it is not subject to the provisions of the Regulatory Flexibility Act.

Unfunded Mandates Act of 1995—Interim and Final Rules

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. We have determined that the final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement or specifically addressed any regulatory alternatives. Although the Unfunded Mandates Reform Act of 1995 does not apply to the interim rule, we have determined that it will not result in such expenditures.

Executive Order 13132—Federalism Summary Impact Statement—Interim and Final Rules

Executive Order 13132 requires Federal agencies, including FMS, to certify their compliance with that Order when they transmit to the Office of Management and Budget (OMB) any draft final regulation that has federalism implications. Under the Order, a regulation has federalism implications if it has ''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.'' In the case of a regulation that has federalism implications and that preempts State law, the Order imposes certain specific requirements that the agency must satisfy, to the extent practicable and permitted by law, prior to the formal promulgation of the regulation.

In general, the Executive Order requires the agency to adhere strictly to Federal constitutional principles in developing rules that have federalism implications; provides guidance about an agency's interpretation of statutes that authorize regulations that preempt State law; and requires consultation with State officials before the agency issues a final rule that has federalism implications or that preempts State law.

The interim and final rules 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.

List of Subjects in 31 CFR Part 210

Automated Clearing House, Electronic funds transfer, Financial institutions, Fraud, and Incorporation by reference.

Authority and Issuance

For the reasons set forth in the preamble, part 210 of title 31 of the Code of Federal Regulations is amended as follows:

PART 210—FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE

1. The authority citation for part 210 continues to read as follows:

Authority: 5 U.S.C. 5525; 12 U.S.C. 391; 31 U.S.C. 321, 3301, 3302, 3321, 3332, 3335, and 3720.

2. Revise § 210.2(d) to read as follows:

§ 210.2 Definitions.

* * * * *

(d) *Applicable ACH Rules* means the ACH Rules with an effective date on or before March 15, 2002, as published in Parts II, III, and IV of the ''2002 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network,'' except:

(1) ACH Rule 1.1 (limiting the applicability of the ACH Rules to members of an ACH association);

(2) ACH Rule 1.2.2 (governing claims for compensation);

(3) ACH Rule 1.2.4; 2.2.1.10; Appendix Eight and Appendix Eleven (governing the enforcement of the ACH Rules, including self-audit requirements);

(4) ACH Rules 2.2.1.8; 2.6; and 4.7 (governing the reclamation of benefit payments);

(5) ACH Rule 8.3 and Appendix Two (requiring that a credit entry be originated no more than two banking days before the settlement date of the entry—see definition of ''Effective Entry Date'' in Appendix Two); and

(6) ACH Rule 2.10.2.2 (requiring that originating depository financial institutions (ODFIs) establish exposure

limits for Originators of Internet-initiated debit entries).

* * * * *

3. Revise § 210.3(b) to read as follows:

* * * * *

(b) *Incorporation by reference—applicable ACH Rules.*

(1) This part incorporates by reference the applicable ACH Rules, including rule changes with an effective date on or before March 15, 2002, as published in Parts II, III, and IV of the ''2002 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network.'' The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the ''2002 ACH Rules'' are available from NACHA—The Electronic Payments Association, 13665 Dulles Technology Drive, Suite 300, Herndon, Virginia 20171. Copies also are available for public inspection at the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, D.C.

(2) Any amendment to the applicable ACH Rules that takes effect after March 15, 2002, shall not apply to Government entries unless the Service expressly accepts such amendment by publishing notice of acceptance of the amendment to this part in the **Federal Register**. An amendment to the ACH Rules that is accepted by the Service shall apply to Government entries on the effective date of the rulemaking specified by the Service in the **Federal Register** notice expressly accepting such amendment.

4. Add new paragraphs (g), (h) and (i) to § 210.6 to read as follows:

§ 210.6 Agencies.

* * * * *

(g) *Point-of-purchase debit entries.* An agency may convert to an ACH debit entry a check drawn on a consumer or business account and presented at a point-of-purchase. Agencies shall use the Point-of-Purchase (POP) Standard Entry Class (SEC) code for entries to consumer accounts and the Cash Concentration or Disbursement (CCD) SEC code for entries to business accounts. The requirements of ACH Rules 2.1.2 and 3.4 shall be met for such an entry if the Receiver presents the check at a location where the agency has posted a conspicuous notice at the point-of-purchase containing the disclosure set forth at Appendix A to this part and makes available to the Receiver, in a form that the Receiver can retain, the disclosure set forth at Appendix B to this part. For purposes of ACH Rules 3.10 and 4.1.1, authorization shall consist of a copy of the notice and a copy of the Receiver's source document.

(h) *Accounts receivable check conversion.*

(1) Conversion of consumer checks. The notice and authorization requirements of ACH Rules 2.1.4 and 3.6.1 shall be met for an accounts receivable entry only if an agency has provided the Receiver with the disclosure set forth at Appendix C to this part.

(2) Conversion of business checks. An agency may convert to an ACH debit a check drawn on a business account that is received via mail or at a dropbox location if the agency has provided the Receiver with the disclosure set forth at Appendix C. The agency shall use the CCD SEC code for such entries, which shall be deemed to meet the requirements of ACH Rule 2.1.2 if the agency has provided the disclosure set forth at Appendix C. For purposes of ACH Rules 3.10 and 4.1.1, authorization shall consist of a copy of the notice and a copy of the Receiver's source document.

(i) *Returned item service fee.* An agency may originate an ACH debit entry to collect a one-time service fee in connection with an ACH debit entry originated pursuant to paragraph (g) or (h) of this section that is returned due to insufficient funds. An entry originated pursuant to this paragraph shall meet the requirements of ACH Rules 2.1.2 and 3.4 if the agency has complied with the disclosure requirements of paragraph (g) or (h), as appropriate. For purposes of ACH Rule 3.10 and 4.1.1, authorization shall consist of a copy of the notice provided under paragraph (g) or (h), as applicable, and a copy of the Receiver's source document.

5. Add new Appendices A, B, and C to Part 210 to read as follows:

Appendix A to Part 210—Standard Disclosure for Point-of-Purchase Conversion—Posted Notice

Notice to Customers Presenting Checks

Conversion of Checks—If you are presenting a check to the cashier, your check will be converted into an electronic fund transfer. When you hand your completed, signed check to the cashier, your check will be copied. The account information from your check will be used to make an electronic fund transfer from your account in the amount of the check. The cashier will void the check and return it to you.

Insufficient Funds—The electronic fund transfer from your account will usually occur within 24 hours, which is faster than a check is normally processed. Do not present a check to the cashier unless there are sufficient funds available in your checking account. If the electronic fund transfer cannot be completed because of insufficient funds, we may try to make the transfer up to two more times [and we will charge you a one-time fee of $ _____, which we will also collect by electronic fund transfer].

Authorization—By reading this notice and handing your check to the cashier, you authorize the conversion of your check into an electronic fund transfer. If the electronic fund transfer cannot be processed for technical reasons, you authorize us to process the copy of your original check.

More Information—A pamphlet with more information about this process, including information about your rights under Federal law, is available from the cashier. [You may also call _____ or visit our Internet site at _____ for detailed information.]

Note: This notice must be conspicuous. This means that the notice should be printed on a sign that is prominently posted at the location where checks are presented to a cashier, in such a way that it is clearly visible from several feet away to customers waiting to present checks.

Appendix B to Part 210—Standard Disclosure for Point-of-Purchase Conversion—Brochure or Pamphlet

What is point-of-purchase check conversion? Point-of-purchase check conversion is the process of converting checks that customers present to cashiers into electronic fund transfers. ''Electronic fund transfer'' is the term used to refer to the process in which we electronically instruct your financial institution to transfer funds from your account to our account, rather than processing your check. When you hand a check to the cashier, your check is copied and the account information from your check is used to make an electronic fund transfer from your account. The cashier voids your check and returns it to you. By presenting your check at a location where a sign notifies you that your check will be converted, you authorize the conversion of your check into an electronic fund transfer in this manner.

How quickly will funds be transferred from my account? The electronic fund transfer from your account will usually occur within 24 hours, which is faster than a check is normally processed. Therefore, you should be sure that there are sufficient funds available in your checking account when you present your check. If the electronic fund transfer cannot be completed because there are insufficient funds in your account, we may try to make the transfer up to two more times [and we will impose a one-time fee of $_____ against your account, which we will also collect by electronic fund transfer].

Will the electronic fund transfer appear on my account statement? The electronic fund transfer from your account will be on the account statement that you receive from your financial institution. However, the transfer may be in a different place on your statement than the place where your checks normally appear. For example, it may appear under ''other withdrawals'' or ''other transactions.'' The electronic fund transfer should be identified on your statement as ''[insert].''

What if there is a problem with the electronic fund transfer? You should contact

your financial institution immediately if you believe that the electronic fund transfer reported on your account statement was not properly authorized or is otherwise incorrect. Consumers have protections under a Federal law called the Electronic Fund Transfer Act for an unauthorized or incorrect electronic fund transfer.

What if the electronic fund transfer cannot be processed? In rare instances, an electronic fund transfer cannot be processed for reasons other than insufficient funds. In these cases, we will process the copy of your original check. Different rights apply to the processing of the copy of the check than apply to an electronic fund transfer.

[More detailed information about this process is available on our Internet site at _____ or by calling _____.]

Note: This disclosure must be conspicuous. This means that it should be printed in reasonably large typeface. If this disclosure is combined with other information, it should be set off by contrasting color, by surrounding it with a box, or by using other means to ensure that it is prominently featured.

Appendix C to Part 210—Standard Disclosure for Lockbox Conversion—Notice

Notice to Customers Making Payment by Check

Authorization to Convert Your Check—If you send us a check to make your payment, your check will be converted into an electronic fund transfer. ''Electronic fund transfer'' is the term used to refer to the process in which we electronically instruct your financial institution to transfer funds from your account to our account, rather than processing your check. By sending your completed, signed check to us, you authorize us to copy your check and to use the account information from your check to make an electronic fund transfer from your account for the same amount as the check. If the electronic fund transfer cannot be processed for technical reasons, you authorize us to process the copy of your check.

Insufficient Funds—The electronic fund transfer from your account will usually occur within 24 hours, which is faster than a check is normally processed. Therefore, make sure there are sufficient funds available in your checking account when you send us your check. If the electronic fund transfer cannot be completed because of insufficient funds, we may try to make the transfer up to two times [and we will charge you a one-time fee of $_____, which we will also collect by electronic fund transfer].

Transaction Information—The electronic fund transfer from your account will be on the account statement you receive from your financial institution. However, the transfer may be in a different place on your statement than the place where your checks normally appear. For example, it may appear under ''other withdrawals'' or ''other transactions.'' You will not receive your original check back from your financial institution. For security reasons, we will destroy your original check, but we will keep a copy of the check for recordkeeping purposes.

Your Rights—You should contact your financial institution immediately if you believe that the electronic fund transfer reported on your account statement was not properly authorized or is otherwise incorrect. Consumers have protections under a Federal law called the Electronic Fund Transfer Act for an unauthorized or incorrect electronic fund transfer.

Note: This disclosure must be conspicuous. This means that it should be printed in reasonably large typeface. If this disclosure is combined with other information, it should be set off by contrasting color, by surrounding it with a box, or by using other means to ensure that it is prominently featured.

Dated: April 5, 2002.

Richard L. Gregg,

Commissioner.

[FR Doc. 02–8885 Filed 4–10–02; 8:45 am]

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Federal Register

Vol. 67, No. 70

Thursday, April 11, 2002

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids	**202–523–5227**
Laws	**523–5227**

Presidential Documents

Executive orders and proclamations	**523–5227**
The United States Government Manual	**523–5227**

Other Services

Electronic and on-line services (voice)	**523–3447**
Privacy Act Compilation	**523–3187**
Public Laws Update Service (numbers, dates, etc.)	**523–6641**
TTY for the deaf-and-hard-of-hearing	**523–5229**

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FEDERAL REGISTER PAGES AND DATE, APRIL

15333–15462 1
15463–15706 2
15707–16010 3
16011–16284 4
16285–16626 5
16627–16968 8
16969–17278 9
17279–17602 10
17603–17904 11

CFR PARTS AFFECTED DURING APRIL

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

Proclamations:
7536 17599
7537 17601

5 CFR

410 15463
550 15463
551 15463
630 15463
1600 17603
1650 17603

7 CFR

400 16285
401 16285
403 16285
405 16285
406 16285
409 16285
414 16285
415 16285
416 16285
422 16285
425 16285
430 16285
433 16285
435 16285
437 16285
441 16285
443 16285
445 16285
446 16285
447 16285
450 16285
451 16285
454 16285
455 16285
456 16285
458 16285
916 16286
917 16286
989 15707
1280 17848
1703 16011
1714 16969
3565 16969

Proposed Rules:
500 17301
905 15339
927 15747
1205 15495
1219 17018
1710 17018

8 CFR

286 15333

Proposed Rules:
286 15753

9 CFR

53 17605
94 15334
113 15711

Proposed Rules:
Ch. III 15501
113 16327

10 CFR

20 16298

Proposed Rules:
50 16654
170 17490
171 17490
430 17304
710 16061
824 15339

12 CFR

3 16971
208 16971
225 16971
226 16980
264a 15335
325 16971
567 16971
609 16627
620 16627

Proposed Rules:
563b 17230
574 17230
575 17230

13 CFR

Proposed Rules:
121 .....16063, 17020

14 CFR

Ch. VI 17258
39 .....15468, 15470, 15472, 15473, 15475, 15476, 15714, 15717, 16011, 16983, 16987, 16991, 16994, 17279
71 .....15478, 15479
97 .....16013, 16014
1300 17258
1310 17258

Proposed Rules:
25 .....16329, 16656
39 .....15755, 15758, 15760, 15762, 15763, 16064, 16067, 16069, 16330, 16331, 16333, 16335, 17305, 17306
71 .....15502, 15503, 15504
382 17308

16 CFR

Proposed Rules:
310 15767

18 CFR

Proposed Rules:
Ch. 1 16071

19 CFR

181 15480
191 16634
Proposed Rules:
141 16664
142 16664

21 CFR

173 15719
201 16304
330 16304
331 16304
341 16304
346 16304
355 16304
358 16304
369 16304
510 17282
520 17284
522 17282
701 16304
Proposed Rules:
212 15344
872 16338

22 CFR

62 17611
Proposed Rules:
213 17655

26 CFR

Proposed Rules:
1 17309

27 CFR

Proposed Rules:
4 17312

28 CFR

89 17027

29 CFR

1979 15454
2520 17264
4022 16950
4022B 16950
4044 16950
Proposed Rules:
552 ..... 16668, 17760

30 CFR

Proposed Rules:
936 16341

31 CFR

210 17896
Ch. V 16308

32 CFR

199 15721
326 17616
505 17618
806b 17619
935 16997

33 CFR

100 ..... 17621, 17622
Proposed Rules:
100 17665
117 16016
165 ..... 15484, 15744, 16016, 17284, 17667
Proposed Rules:
147 15505
165 ..... 15507, 16668, 17314

36 CFR

703 16018
1254 17286
Proposed Rules:
1190 15509
1191 15509

38 CFR

Ch. 1 16023
20 16309

39 CFR

224 16023
229 16023
230 16024
233 16023
266 16023
273 16023

40 CFR

52 ..... 15335, 15336, 16026, 16638, 16640, 16642, 16644, 17007, 17286, 17624
63 ..... 15486, 16317, 16582, 16614, 17762, 17824
81 16646
148 16262
180 ..... 15727, 16027, 17631
261 16262
268 ..... 16262, 17119
271 ..... 16262, 17636
302 16262
721 17643
745 15489
Proposed Rules:
9 17122
52 ..... 15345, 16669, 17317, 17669
62 17321
63 ..... 15510, 15674, 16154, 16343, 16625, 17492
70 15767
122 17122
123 17122
124 17122
125 17122
180 16073
228 15348
721 16345
1603 16670

41 CFR

101-25 17649

42 CFR

68c 17650

43 CFR

3130 17866
3160 17866

44 CFR

64 16030

45 CFR

Proposed Rules:
701 17528
702 17528
703 17528
704 17528
705 17528
706 17528
707 17528
708 17528

47 CFR

1 ..... 16647, 17009
2 ..... 17009, 17288
25 17288
26 17009
36 17013
52 16322
54 ..... 15490, 17014
61 17009
69 ..... 15490, 17009
73 ..... 15493, 15735, 15736, 16651, 16652, 17014, 17654
74 16652
76 17015
87 17288
90 16652
Proposed Rules:
1 ..... 17036, 17325
2 ..... 16683, 17038
25 16347
52 16347
61 17036
69 17036
73 ..... 15768, 15769, 16350, 16351, 16673, 16706, 17041, 17669, 17670
74 16683
80 16683
90 ..... 16351, 16683
97 16683

48 CFR

1823 17016
1836 17016
1852 17016
Proposed Rules:
27 17278
52 17278
208 15351
216 15351

49 CFR

171 15736
172 15736
173 15736
174 15736
176 15736
178 15736
180 15736
229 16032
232 17556
533 16052
659 15725
Proposed Rules:
171 15510
172 15510
173 15510
175 15510
191 16355
192 16355
195 16355
567 15769
571 15769
574 15769
575 15769

50 CFR

17 15337
229 15493
600 15338
660 ..... 15338, 16322, 16323
679 16325
Proposed Rules:
17 ..... 15856, 16492
92 16707
600 15516
622 16359
635 17349
648 ..... 16079, 16362
660 ..... 17353, 17354
679 15517

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 APRIL 11, 2002

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Petroleum refineries; catalytic cracking units, catalytic reforming units, and sulfur recovery units; published 4-11-02
- Wet-formed fiberglass mat production; published 4-11-02

Air quality planning purposes; designation of areas:
- Ohio; published 3-12-02

Hazardous waste program authorizations:
- Washington; published 4-11-02

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Lysophosphatidylethanolamine; published 4-11-02

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Thrift Savings Plan:
- Employee elections to contribute and funds withdrawal methods; published 4-11-02

GENERAL SERVICES ADMINISTRATION

Federal property management:
- Promotional benefits, including frequent flyer miles, earned on official travel; property of Government requirement provisions removed; published 4-11-02

STATE DEPARTMENT

Exchange Visitor Program:
- Regulations; revisions; published 4-11-02

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Avocados grown in—
- Florida; comments due by 4-15-02; published 3-15-02 [FR 02-06139]

Milk marketing orders:
- Upper Midwest; comments due by 4-15-02; published 2-14-02 [FR 02-03634]

Prunes (dried) produced in—
- California; comments due by 4-15-02; published 3-15-02 [FR 02-06144]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Fruits and vegetables, imported; irradiation phytosanitary treatment; comments due by 4-15-02; published 3-15-02 [FR 02-06267]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:
- California and Oregon; phytophthora ramorum; public hearings; comments due by 4-15-02; published 2-14-02 [FR 02-03721]

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Loan and purchase programs:
- Noninsured Crop Disaster Assistance Program; comments due by 4-18-02; published 3-19-02 [FR 02-06212]

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Pizza identity standards; elimination; comments due by 4-15-02; published 3-14-02 [FR 02-06125]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:
- Sea turtle conservation—
  - Fishing activities restrictions; comments due by 4-15-02; published 3-29-02 [FR 02-07708]

Fishery conservation and management:
- Magnuson-Stevens Act provisions
  - Domestic fisheries; exempted fishing permit applications; comments due by 4-17-02; published 4-2-02 [FR 02-07931]
- Northeastern United States fisheries—
  - Monkfish; comments due by 4-19-02; published 4-4-02 [FR 02-08076]

CONSUMER PRODUCT SAFETY COMMISSION

Federal Hazardous Substances Act:
- Certain model rocket propellant devices; use with lightweight surface vehicles; comments due by 4-15-02; published 1-30-02 [FR 02-02059]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
- Electronic listing of vehicles available for use by more than one agency; comments due by 4-16-02; published 2-15-02 [FR 02-03786]

ENVIRONMENTAL PROTECTION AGENCY

Acquisition regulations:
- Administrative changes and technical amendments; comments due by 4-15-02; published 3-14-02 [FR 02-05743]

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control:
- Interstate ozone transport reduction—
  - Nitrogen oxides; Section 126 petitions regarding sources; and Title V operating permit programs, applicable requirement definition; comments due by 4-15-02; published 2-22-02 [FR 02-03918]
  - Nitrogen oxides; State implementation plan call, technical amendments, and Section 126 rules; response to court decisions; comments due by 4-15-02; published 2-22-02 [FR 02-03917]
- State operating permits programs—
  - Connecticut; comments due by 4-15-02; published 3-15-02 [FR 02-06273]

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 4-15-02; published 3-15-02 [FR 02-06271]
- Texas; comments due by 4-19-02; published 3-20-02 [FR 02-06721]

Hazardous waste program authorizations:
- Michigan; comments due by 4-15-02; published 2-28-02 [FR 02-04788]

Hazardous waste:
- Resource Conservation and Recovery Act Burden Reduction Initiative; comments due by 4-17-02; published 1-17-02 [FR 02-00191]

Radiation protection programs:
- Idaho National Engineering and Environmental Laboratory—
  - Transuranic radioactive waste for disposal at Waste Isolation Pilot Plant; waste characterization program documents availability; comments due by 4-19-02; published 3-20-02 [FR 02-06844]

Toxic substances:
- Significant new uses—
  - Neodecaneperoxoic acid, etc.; comments due by 4-19-02; published 3-20-02 [FR 02-06724]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- International call-back service, uncompleted call signaling configuration; other nations' prohibitions enforcement; comments due by 4-15-02; published 3-8-02 [FR 02-05381]
- Satellite services—
  - Satellite earth stations use on board vessels in bands shared with terrestrial fixed service; procedures; comments due by 4-19-02; published 3-22-02 [FR 02-06917]

Radio and television broadcasting:
- Broadcast and cable EE0 rules and policies; revision; comments due by 4-15-02; published 3-8-02 [FR 02-05380]
- Noncommercial educational broadcast stations applicants; comparative standards reexamination; comments due by 4-15-02; published 3-5-02 [FR 02-05165]

FEDERAL TRADE COMMISSION

Telemarketing sales rule; comments due by 4-15-02; published 4-3-02 [FR 02-08016]

Textile Fiber Products Identification Act:
- Elasterell-p; new generic fiber name and definition;

comments due by 4-19-02; published 2-15-02 [FR 02-03195]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Electronic listing of vehicles available for use by more than one agency; comments due by 4-16-02; published 2-15-02 [FR 02-03786]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:

No residue; definition revision; comments due by 4-17-02; published 1-17-02 [FR 02-01170]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Human drugs:

Prescription drug marketing; effective date delay; comments due by 4-15-02; published 2-13-02 [FR 02-03282]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Medical devices:

Cutaneous carbon dioxide and cutaneous oxygen monitors; reclassification into class II special controls; comments due by 4-15-02; published 2-12-02 [FR 02-03281]

HEALTH AND HUMAN SERVICES DEPARTMENT

Tribal Self-Governance Amendments of 2000; implementation:

Indian Health Service; tribal self-governance; comments due by 4-15-02; published 2-14-02 [FR 02-03248]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Critical habitat designations—

Roswell springsnail, etc.; comments due by 4-15-02; published 2-12-02 [FR 02-03140]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Electronic listing of vehicles available for use by more than one agency; comments due by 4-16-02; published 2-15-02 [FR 02-03786]

NUCLEAR REGULATORY COMMISSION

Rulemaking petitions:

Leyse, Robert H.; comments due by 4-15-02; published 1-29-02 [FR 02-02075]

NUCLEAR REGULATORY COMMISSION

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:

Approved spent fuel storage casks; list; comments due by 4-15-02; published 3-15-02 [FR 02-06228]

NUCLEAR REGULATORY COMMISSION

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:

Approved spent fuel storage casks; list; comments due by 4-15-02; published 3-15-02 [FR 02-06227]

PERSONNEL MANAGEMENT OFFICE

Employment:

Recruitment and selection through competitive examination; comments due by 4-16-02; published 2-15-02 [FR 02-03621]

PERSONNEL MANAGEMENT OFFICE

Pay administration:

Administratively uncontrollable overtime pay; comments due by 4-15-02; published 2-13-02 [FR 02-03410]

SMALL BUSINESS ADMINISTRATION

Small business size standards:

Nonmanufacturer rule; waivers—

Plain unmounted bearings and mounted bearings; comments due by 4-15-02; published 4-4-02 [FR 02-07958]

Travel agencies; comments due by 4-15-02; published 3-15-02 [FR 02-06195]

SMALL BUSINESS ADMINISTRATION

Small business standards and disaster loan program:

Travel agencies; economic injury disaster loan program; comments due by 4-15-02; published 3-15-02 [FR 02-06194]

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:

Missouri; comments due by 4-16-02; published 2-15-02 [FR 02-03693]

Ports and waterways safety:

New London, CT; safety zone; comments due by 4-19-02; published 3-20-02 [FR 02-06765]

Oahu, Maui, Hawaii, and Kauai, HI; anchorages and security zones; comments due by 4-15-02; published 3-20-02 [FR 02-06733]

Ohio River, Shippingport, PA; security zone; comments due by 4-17-02; published 3-18-02 [FR 02-06364]

Pilgrim Nuclear Power Plant, Plymouth, MA; safety and security zone; comments due by 4-15-02; published 1-29-02 [FR 02-02209]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Bombardier; comments due by 4-19-02; published 3-20-02 [FR 02-06630]

Eurocopter France; comments due by 4-15-02; published 2-14-02 [FR 02-03580]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Eurocopter France; comments due by 4-19-02; published 3-20-02 [FR 02-06627]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Pratt & Whitney; comments due by 4-15-02; published 2-14-02 [FR 02-03669]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Rolls-Royce plc; comments due by 4-15-02; published 2-14-02 [FR 02-03162]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness standards:

Special conditions—

Airbus Industrie Model A340-500/-600 airplanes; comments due by 4-19-02; published 3-20-02 [FR 02-05876]

Dassault Aviation Fan Jet Falcon Series C, D, E, and F, and Mystere-Falcon 20-C5, 20-D5, 20-E5, and 20-F5 airplanes; comments due by 4-17-02; published 3-18-02 [FR 02-06365]

Liberty Aerospace Model XL-2 airplane; comments due by 4-15-02; published 3-14-02 [FR 02-06131]

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Engineering and traffic operations:

Uniform Traffic Control Devices Manual—

Accessible pedestrian signals; comments due by 4-16-02; published 2-15-02 [FR 02-03619]

TRANSPORTATION DEPARTMENT

Federal Motor Carrier Safety Administration

Motor carrier safety standards:

Mexican motor carriers—

Application form to operate beyond U.S. municipalities and commercial zones on U.S.-Mexico border; comments due by 4-18-02; published 3-19-02 [FR 02-05891]

Safety monitoring system and compliance initiative for carriers operating in U.S.; comments due by 4-18-02; published 3-19-02 [FR 02-05892]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes and procedure and administration:

Foreign individuals claiming reduced withholding rates under income tax treaty and receiving unexpected payment; taxpayer identification number requirements

Cross-reference; comments due by 4-17-02; published 1-17-02 [FR 02-01126]

Income taxes:

Catch-up contributions for individuals age 50 or over

Hearing date change and extension of comment period; comments due by 4-15-02; published 2-20-02 [FR 02-04093]

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/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 1499/P.L. 107–157
District of Columbia College Access Improvement Act of 2002 (Apr. 4, 2002; 116 Stat. 118)

H.R. 2739/P.L. 107–158
To amend Public Law 107-10 to authorize a United States plan to endorse and obtain observer status for Taiwan at the annual summit of the World Health Assembly in May 2002 in Geneva, Switzerland, and for other purposes. (Apr. 4, 2002; 116 Stat. 121)

H.R. 3985/P.L. 107–159
To amend the Act entitled ''An Act to authorize the leasing of restricted Indian lands for public, religious, educational, recreational, residential, business, and other purposes requiring the grant of long-term leases'', approved August 9, 1955, to provide for binding arbitration clauses in leases and contracts related to reservation lands of the Gila River Indian Community. (Apr. 4, 2002; 116 Stat. 122)

Last List April 3, 2002

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