



Federal Register

6-10-02

Vol. 67 No. 111

Pages 39595-39840

Monday

June 10, 2002



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Title 3—**Proclamation 7571 of June 5, 2002****The President****National Child's Day, 2002****By the President of the United States of America****A Proclamation**

Children bring joy and challenge to the lives they touch. And as our next generation of leaders, they carry with them the hope of our Nation. From the excitement of watching a toddler take a first step to the satisfaction of seeing them mature into adulthood, we are blessed to share our lives and experiences with children. Their thoughts, ideas, and unique perspectives renew our appreciation for life.

National Child's Day is a time to affirm our commitment as parents, teachers, and citizens to the health, well-being, and success of our children. Our goal must be to make sure that all children have the opportunity to learn and succeed. To achieve this, we must use the resources of our families, communities, schools, and government to ensure that no child is left behind.

My Administration is strongly committed to helping boys and girls grow up in secure families that help them reach their full potential. Families forge values where children can find fulfillment and love. And children who are surrounded by love, support, and encouragement can develop self-esteem and have a strong foundation for life.

We are working to implement programs and initiatives that help families stay strong and intact; that support adoption efforts and mentoring programs; that protect children from abuse and neglect; and that encourage alcohol, drug, and sexual abstinence. We also are making great progress in helping all schools become places where every student is able and expected to learn.

While government can provide much to support children, it cannot provide the love a child needs. I encourage all community leaders, educators, faith-based organizations, and citizens to seek opportunities to mentor, encourage, and listen to our children. As we observe National Child's Day, we should also communicate to young people that their dreams, aspirations, happiness, and well-being are important to us and to our future.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim June 9, 2002, as National Child's Day. I urge all Americans to work within their communities to appreciate, love, and protect all of America's children. I also call upon citizens to observe this day with appropriate programs, ceremonies, and activities.

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

A handwritten signature in black ink, appearing to read "George W. Bush". The signature is written in a cursive style with a large, prominent "G" and "B".

[FR Doc. 02-14648

Filed 6-7-02; 8:45 am]

Billing code 3195-01-P

Rules and Regulations

Federal Register

Vol. 67, No. 111

Monday, June 10, 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.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09-02-026]

RIN 2115-AA97

Safety Zone; Lake Macatawa Triathlon, Holland, MI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Lake Macatawa Triathlon in Holland, Michigan. This safety zone is necessary to protect participants and spectators from potential hazards during a planned triathlon where the swimming portion will occur in Lake Macatawa. The safety zone is intended to restrict vessels from a portion of Lake Macatawa off Holland, Michigan.

DATES: This rule is effective from 6:30 a.m. (local) to 12 p.m. (local), June 15, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09-02-026] and are available for inspection or copying at Marine Safety Office Chicago, 215 W. 83rd Street, Suite D, Burr Ridge, Illinois 60527, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: MST3 Kathryn Varela, U.S. Coast Guard Marine Safety Office Chicago, at (630) 986-2125.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists

for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the necessary effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and participants during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments with regard to this event.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of participants and spectators from the hazards posed by triathlon swimmers in close proximity to vessel traffic. Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Chicago or the designated Patrol Commander. The designated Patrol Commander on scene may be contacted on VHF Channel 16.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of 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 10e 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 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 would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities: the owners or operators of vessels intending to transit or anchor in a portion of Lake Macatawa from 6:30 a.m. to 12 p.m., June 15, 2002. This regulation would not have a significant economic impact for the following reasons. The regulation is only in effect on one day for only five and a half hours. The designated area is being established to allow for maximum use of the waterway for commercial vessels to enjoy the air show in a safe manner. In addition, commercial vessels transiting the area can transit around the area. The Coast Guard will give notice to the public via a Broadcast to Mariners that the rule is in effect.

Assistance for Small Entities

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

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

Civil Justice Reform

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

Protection of Children

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2-1, paragraph (34)(g), of Commandant Instruction M16475.IC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

Indian Tribal Governments

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

Energy Effects

We have analyzed this 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.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05-1(g), 6.04-1, 6.04-6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09-016 is added to read as follows:

§ 165.T09-016 Safety Zone; Lake Macatawa, Holland, MI.

(a) *Location.* The following area is a safety zone: the waters of Lake Macatawa off Dunton Park encompassed by a triangle starting at the Dunton Park dock; to the eastern buoy at 42°47.6' N, 086°07.1' W; to the western buoy at 42°47.626' N, 086°07.283' W; and back to the starting point (NAD 1983).

(b) *Effective date.* This section is effective from 6:30 a.m. (local) until 12 p.m. (local), on June 15, 2002. The designated Patrol Commander on scene may be contacted on VHF Channel 16.

(c) *Regulations.* This safety zone is being established to protect participants and spectators during a planned triathlon. In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Chicago, or the designated Patrol Commander.

Dated: May 31, 2002.

R.E. Seebald,

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

[FR Doc. 02-14520 Filed 6-7-02; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 02-008]

RIN 2115-AA97

Safety Zone; North Pacific Ocean, Gulf of the Farallones, Offshore of San Francisco, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Gulf of the Farallones, North Pacific Ocean, surrounding the site of a sunken freight vessel, JACOB LUCKENBACH, from which the Coast Guard and other government agencies are removing oil trapped inside the wreck. The purpose of this safety zone is to protect persons and vessels from hazards associated with oil removal operations. Persons and vessels are prohibited from entering into or transiting through the safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: The rule will be in effect from 11:59 p.m. (PDT) on May 14, 2002 to 11:59 p.m. (PDT) July 31, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP San Francisco Bay 02-008] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office San Francisco Bay, Building 14, Coast Guard Island, Alameda, California 94501-5100 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Ross Sargent, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437-3073.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Although an investigation revealed in February 2002 that the JACOB LUCKENBACH wreck was the source of recent oil discharges, the decision to remove the oil from the sunken vessel, in order to protect against future discharges, was not made until recently. Publishing an NPRM and delaying the effective date would be contrary to the public interest since the oil removal operations necessitating this safety zone would

likely terminate before the rulemaking process was complete.

For the same reasons stated above, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

In November of 2001, the Coast Guard and other cognizant government agencies began receiving reports of oiled birds washing ashore along the California coastline between Monterey and Sonoma counties. Weeks of searching for surface sheens yielded negative results and prompted responding government agencies to consider sunken vessels in the area as possible sources of the contaminating oil. By February 2002, responding agencies identified the sunken freight vessel JACOB LUCKENBACH as the most probable source and began deploying camera-equipped remotely operated vehicles (ROVs) in order to view the sunken vessel. During this period, the Coast Guard learned that recreational and commercial divers had been diving on or were planning to dive on the sunken vessel while responding agencies were conducting the on-scene investigation. In February 2002, the Coast Guard established a temporary safety zone in the navigable waters surrounding the JACOB LUCKENBACH in order to protect persons and vessels from hazards associated with the investigation operations. That temporary safety zone expired at the end of April 2002.

The Coast Guard and other government agencies have reviewed the results of the investigation and have determined that removal of the oil from within the JACOB LUCKENBACH is the most prudent means of protecting against future oil discharges. Removal of the oil will require several surface and submersible vessels and associated equipment, all of which present hazards, particularly collision dangers, to persons and vessels in the area.

Discussion of Rule

In order to facilitate safe oil removal operations and to guard against the possibility of an accidental discharge of a large quantity of oil into the environment, the Coast Guard is establishing a temporary safety zone in the navigable waters surrounding the sunken vessel. The safety zone encompasses all waters from the surface of the ocean to the bottom within a one nautical mile radius centered at 37°40.38' N, 122°47.59' W, the approximate position of the JACOB

LUCKENBACH. Entry into, transit through or anchoring in this zone by persons, vessels or ROVs is prohibited, unless authorized by the Captain of the Port, or his designated representative.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). Due to the short duration and limited geographic scope of the safety zone, the Coast Guard expects the economic impact of this rule to be so minimal that full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" may include small businesses and not-for-profit organizations that are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000.

For these reasons and the reasons stated in the Regulatory Evaluation section above, 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.

Assistance For Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard offers to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman

and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2-1, paragraph (34)(g), of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation because we are establishing a safety zone. A "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.

Regulation

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05-1(g), 6.04-1, 6.04-6, 160.5; 49 CFR 1.46.

2. Add § 165.T11-082 to read as follows:

§ 165.T11-082 Safety Zone; North Pacific Ocean, Gulf of the Farallones, offshore of San Francisco, CA.

(a) *Regulated area.* The following area is a safety zone: all waters from the

surface of the ocean to the bottom within a one nautical mile radius centered at 37°40.38' N, 122°47.59' W (NAD 83).

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this safety zone by persons, vessels or remotely operated vehicles is prohibited, unless authorized by the Captain of the Port, or a designated representative thereof.

(c) *Effective dates.* The section will be in effect from 11:59 p.m. (PDT) on May 14, 2002 to 11:59 p.m. (PDT) on July 31, 2002. If the need for the safety zone ends prior to the scheduled termination time, the Captain of the Port will cease enforcement of the safety zone and will announce that fact via Broadcast Notice to Mariners.

Dated: May 14, 2002.

L.L. Hereth,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay.

[FR Doc. 02-14522 Filed 6-7-02; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD05-02-033]

RIN 2115-AA97

Safety Zone; Chesapeake Bay, Hampton Roads, James River, VA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone encompassing the M/V DEL MONTE, while conducting explosive exercises. This action is intended to restrict vessel traffic on James River within a 1500-foot radius of the vessel. The safety zone is necessary to protect mariners from the hazards associated with the exercises being conducted. Entry into this zone is prohibited unless authorized by the Captain of the Port Hampton Roads or his designated representative.

DATES: This temporary final rule is effective from 8:30 a.m. (local time), on June 3, 2002 to 4 p.m. (local time), on June 21, 2002.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at USCG Marine Safety Office Hampton Roads, 200 Granby Street, Norfolk, Virginia, 23510 between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Monica Acosta, project officer, USCG Marine Safety Office Hampton Roads, at (757) 441-3453.

SUPPLEMENTARY INFORMATION:

Regulatory Information

A notice of proposed rulemaking (NPRM) was not published for this regulation. In keeping with requirements of 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM, which would incorporate a comment period before a final rule was issued, would be contrary to the public interest since immediate action is needed to protect mariners from this vessel. For similar reasons, under 5 U.S.C. 553(d) (3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The Coast Guard is establishing a temporary safety zone encompassing the M/V DEL MONTE, in approximate position 37°06'11" N, 076°38'40" W. The safety zone will restrict vessel traffic on a portion of the James River, within a 1500-foot radius of the M/V DEL MONTE. The safety zone is necessary to protect mariners from the hazards associated with the explosives exercises.

The safety zone will be effective from 8:30 a.m. (local time) on June 3, 2002 to 4 p.m. (local time), on June 21, 2002. Entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representative. Public notifications will be made prior to the transit via marine information broadcasts.

Regulatory Evaluation

This temporary final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget 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 access to the regulated area, the effect of this regulation will not be significant because: (i) The COTP may authorize access to the safety zone; (ii) the safety zone will be in effect for a limited duration; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

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

For the reasons stated in the *Regulatory Evaluation*, the Coast Guard certifies under 5 U.S.C. section 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 and operators of vessels intending to transit or anchor within 1500 feet of the M/V DEL MONTE in approximate position 37°06'11" N, 076°38'40" W from 8:30 a.m. (local time), on June 3, 2002 to 4 p.m. (local time), on June 21, 2002. (NAD 83)

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because

it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This is a safety zone of over one week in duration. A "Categorical Exclusion Determination" will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

Part 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. From 8:30 a.m. on June 3, 2002, to 4 p.m. on June 21, 2002, add a temporary § 165.T05–033 to read as follows:

§ 165.T05–033 Safety Zone; Chesapeake Bay, Hampton Roads and James River, VA

(a) *Location*. The following area is a safety zone: all waters of the James River within a 1500-foot radius of the M/V DEL MONTE in approximate position 37°06'11" N, 076°38'40" W (NAD 83).

(b) *Captain of the Port*. Captain of the Port (COTP) means the Commanding Officer of the Marine Safety Office Hampton Roads, Norfolk, VA or any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on his behalf.

(c) *Regulations*: (1) All persons are required to comply with the general regulations governing safety zones found in § 165.23 of this part.

(2) Persons or vessels requiring entry into or passage through a safety zone must first request authorization from the

Captain of the Port or his designated representative. The Captain of the Port can be contacted at telephone number (757) 441-3298.

(3) No vessel movement is allowed within the safety zone unless expressly authorized by the COTP or his designated representative.

(d) *Effective Dates.* This section will be effective from 8:30 a.m. local time, June 3, 2002, to 4 p.m. local time June 21, 2002.

Dated: May 31, 2002.

L.M. Brooks,

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

[FR Doc. 02-14521 Filed 6-7-02; 8:45 am]

BILLING CODE 4910-15-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AD-FRL-7223-8]

RIN 2060-AH25

Consolidated Emissions Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action simplifies and consolidates emission inventory reporting requirements to a single location within the Code of Federal Regulations (CFR), establishes new reporting requirements related to PM_{2.5} and regional haze, and establishes new requirements for the statewide reporting of area source and mobile source emissions. Many State and local agencies asked EPA to take this action to: Consolidate reporting requirements; improve reporting efficiency; provide flexibility for data gathering and reporting; and better explain to program managers and the public the need for a consistent inventory program. Consolidated reporting should increase the efficiency of the emission inventory program and provide more consistent and uniform data.

DATES: The regulatory amendments announced in this rule take effect on August 9, 2002.

ADDRESSES: *Docket.* Supporting material used in developing the proposal and final regulatory revisions is contained in Docket Number A-98-40. This docket is available for public inspection and copying between 8:30 a.m. and 5:30 p.m., Monday through Friday. The address of the EPA air docket is: Air and Radiation Docket and Information Center (6102), Attention Docket Number

A-98-40, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The Docket is located in Room M-1500, Waterside Mall (ground floor). The telephone number for the EPA air docket is (202) 260-7548. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT:

William B. Kuykendal, Emissions, Monitoring, and Analysis Division (MD-C205-01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, Telephone: (919) 541-5372, email: kuykendal.bill@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Authority

Sections 110(a)(2)(F), 110(a)(2)(K), 110(a)(2)(J), 110(p), 172(c)(3), 182(a)(3), 187(a)(5), 301(a) of the Clean Air Act.

II. Background

Emission inventories are critical for the efforts of State, local, and federal agencies to attain and maintain the National Ambient Air Quality Standards (NAAQS) that EPA has established for criteria pollutants such as ozone, particulate matter, and carbon monoxide. Pursuant to its authority under section 110 of Title I of the Clean Air Act (CAA), EPA has long required State Implementation Plans (SIPs) to provide for the submission by States to EPA of emission inventories containing information regarding the emissions of criteria pollutants and their precursors (e.g., volatile organic compounds (VOC)). The EPA codified these requirements in 40 CFR part 51, subpart Q in 1979 and amended them in 1987.

The 1990 Amendments to the CAA revised many of the provisions of the CAA related to the attainment of the NAAQS and the protection of visibility in mandatory Class I Federal areas (certain national parks and wilderness areas). These revisions established new periodic emission inventory requirements applicable to certain areas that were designated nonattainment for certain pollutants. For example, section 182(a)(3)(A) required States to submit an emission inventory every three years for ozone nonattainment areas beginning in 1993. Emissions reported must include VOC, nitrogen oxides (NO_x), and carbon monoxide (CO) for point, area, mobile (onroad and nonroad), and biogenic sources. Similarly, section 187(a)(5) required States to submit an inventory every three years for CO nonattainment areas for the same source classes, except biogenic sources. The EPA, however, did not codify these statutory

requirements in the Code of Federal Regulations (CFR), but simply relied on the statutory language to implement them.

The EPA has promulgated the NO_x SIP Call (§ 51.121) which calls on the affected States and the District of Columbia to submit SIP revisions providing for NO_x reductions in order to reduce the amount of ozone and ozone precursors transported among States. As part of that rule, EPA established emissions reporting requirements to be included in the SIP revisions to be submitted by States in accordance with that action.¹

This rule consolidates the various emissions reporting requirements that already exist into one place in the CFR, establishes new reporting requirements related to PM_{2.5} and regional haze, and establishes new requirements for the statewide reporting of area source and mobile source emissions. This rule also includes the reporting provisions for the NO_x SIP call. The NO_x SIP call reporting requirements are very detailed and are specified in 40 CFR 51.122; this rule references these requirements.

In this action, we refer to the required types of inventories as the following:

- Annual inventories.
- 3-year cycle inventories.

The EPA anticipates that States will use data obtained through their current annual source reporting requirements (annual inventories) to report emissions from larger point sources annually. States will need to get data from smaller point sources only every third year. States may also take advantage of data from Emission Statements that are available to States but not reported to EPA. As appropriate, States may use these data to meet their reporting requirements for point sources. States will also be required to inventory area and mobile source emissions on a Statewide basis for the 3-year cycle inventory. We will be furnishing each State the National Emission Inventory (NEI) which should be a good starting point for estimating area source emissions. Mobile source emissions should be estimated by using the latest emissions models and planning assumptions available. The MOBILE emissions factor model should be used to estimate emissions from on-road

¹ EPA recognizes that the United States Court of Appeals has remanded certain issues regarding the NO_x SIP call to the Agency. See *Michigan v. EPA*, 213 F. 3d 663 (D.C. Cir. 2000), and *Appalachian Power Co. v. EPA*, No. 99-1268, United States Court of Appeals for the District of Columbia Circuit, slip op. Issued June 8, 2001. Those issues, however, do not include the reporting requirements and the consolidation of those requirements does not represent any prejudgment of the issues on remand to the Agency.

transportation sources, in combination with the latest available estimates of vehicle miles traveled (VMT). The NONROAD model can be used for off-road mobile sources as appropriate. By merging this information into a comprehensive emission inventory, State and local agencies may do the following:

- Measure their progress in reducing emissions.
- Have a tool they can use to support future trading programs.
- Set a baseline from which to do future planning.
- Answer the public's request for information.

We intend these inventories to help nonattainment areas develop and meet SIP requirements to reach the NAAQS and comply with the regional haze regulation.

For the first time, all States will need to inventory direct emissions of PM_{2.5} and ammonia (NH₃). Since PM_{2.5} is both a NAAQS pollutant and a major contributor to visibility impairment, we feel it is appropriate to begin collecting this emissions data. These PM_{2.5} related data elements are needed as input to emission models. Emissions data will also be a factor in the development of PM_{2.5} nonattainment area boundaries.

The Administrator has determined that States should submit statewide annual and 3-year cycle inventories for PM₁₀, PM_{2.5}, and regional haze, consistent with the data requirements for O₃ and CO. Sections 110(a)(2)(F) and 172(c)(3) provide ample statutory authority for this rule. Section 110(a)(2)(F) provides that SIPs are to require "as may be prescribed by the Administrator * * * (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources." Section 172(c)(3) provides that SIPs for nonattainment areas are to "include a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area, including such periodic revisions as the Administrator may determine necessary to assure that the requirements of this part are met." Additional statutory authority for emissions inventories from 1-hour ozone nonattainment areas is provided by section 182(a)(3)(A) and for emissions inventories from CO nonattainment areas is provided by section 187(a)(5). Section 301(a) provides authority for EPA to promulgate regulations embodying these provisions.

What Is the Purpose of the Consolidated Emissions Reporting Rule (CERR)?

The purpose of this rule is fivefold:

- Simplify emissions reporting,
- Offer options for data submittal,
- Unify reporting dates for various categories of inventories,
- Include reporting fine particulate matter and NH₃ (**Note:** Initially PM_{2.5} and NH₃ reporting will only be required for area and mobile sources. States will be required to commence point source reporting of PM_{2.5} and NH₃ at a later date as detailed in § 51.30.) and,
- Include Statewide reporting for area and mobile sources.

Previous requirements may have, at times, led to inefficient reporting. This rule provides for options for reporting that allow States to match their ongoing activities with federal requirements. This action also consolidates existing and new requirements of emission inventory programs for annual and 3-year cycle inventories.

Who Will Have To Comply With the CERR Requirements?

This rule will apply to State air pollution control agencies. In the special case where a State Implementation Plan provides for independent jurisdiction for local air pollution control agencies, these local agencies will also have to comply with the CERR requirements. In the rule, we have adopted "plain English language". When "you" is used, we mean the State or local agency. When "we" is used, EPA is meant.

How Will This Rule Affect Tribes?

One of the principal goals of the Tribal Authority Rule (TAR) is to allow tribes the flexibility to develop and administer their own CAA programs to as full an extent as they elect, while at the same time ensuring that the health and safety of the public are protected. In seeking to achieve this principal goal, the TAR adopts a modular approach, that is, it authorizes tribes to develop and implement only discrete portions of CAA programs, instead of entire complex programs. Neither the CAA nor the TAR require tribes to adopt and manage CAA programs. Accordingly, the tribes are not required to develop an emissions inventory for sources within their jurisdiction. However, the emissions inventory is an important part of understanding the air quality status on the reservations and would be helpful in determining the best approach for addressing any air quality issues identified. Therefore, EPA expects that many of the tribes will wish to develop emissions inventories. This

rule can provide valuable guidance to the tribes on how to develop these inventories, for example, by pointing out that any inventory data that are collected should be quality assured, and explaining how to do so. In addition, it would be very helpful if this information were recorded in EPA's National Emission Inventory (NEI) data format. This would make it possible to include the tribal data in the NEI which should facilitate future efforts by EPA when working with the tribes to develop air quality plans for reservations.

How Are the CERR's Requirements Different From Existing Requirements?

(a) Additional Pollutants

Your State's inventory will add PM_{2.5} and the precursor NH₃ to the criteria pollutants. (**Note:** Initially PM_{2.5} and NH₃ reporting will only be required for area and mobile sources. States will be required to commence point source reporting of PM_{2.5} and NH₃ at a later date as detailed in § 51.30.)

(b) Geographic Coverage of Inventory

Your State now reports point source emissions statewide and emissions from area and mobile sources by nonattainment area. Your State's new inventory will be statewide by county for all source types, regardless of the attainment status.

(c) Frequency of Reporting

Your State will continue to report emissions from larger point sources (See Table 1 of Appendix A) annually. Your State has a choice to report smaller point sources every three years or one-third of the sources each year. Your State will continue to report emissions from nonattainment areas for area and mobile sources every three years. Area and mobile source emissions in all other areas will be required to be reported for the first time, also every three years.

How Will EPA Use the Data Collected Under This Reporting Requirement?

The EPA uses emission inventories for the following purposes:

- Modeling analyses,
- Projecting future control strategies,
- Tracking progress to meet requirements of the CAA,
- Calculating risk and
- Responding to public inquiries.

How Will Others Use My Data Collected Under This Requirement?

Some States need emissions data for areas outside their borders. Programs such as the Ozone Transport Assessment Group, the Ozone Transport Commission NO_x Baseline Study, and the Grand Canyon Visibility Transport

Commission demonstrated this need. As we recognize pollution as a regional problem, agencies will need multistate inventories more often to do such things as regional modeling. The EPA has established five Regional Planning Organizations (RPOs) that cover the nation. The RPOs are initially charged with developing regional strategies to address visibility concerns. Each RPO will be developing a regional emission inventory that will be used in regional scale modeling.

We can meet our common needs by creating a central repository of data from State and local agencies, or a group of regional emissions databases. Such repositories offer the advantage of ready access and availability, common procedures for ensuring the quality of data, and an ability to meet the general needs of many potential users.

What Happens if EPA Doesn't Get My Agency's Emissions Data?

We have structured this rule and our own emission inventory development plans so that the chance of this happening is minimized. We will develop our own preliminary National Emission Inventory (NEI) and furnish it to each State. You may choose to use the NEI as a starting point for development of your Statewide emission inventory. We strongly urge you to develop your own emission inventory. However, you may choose to accept all or part of the area source, mobile source and biogenic portions of the NEI as estimated by EPA without change and use these as your submittal to EPA. To do this, you can certify that you accept the EPA developed portions as your own estimates. Since you have been required to submit point source inventories to us since 1979 and since today's action reduces your point source reporting burden, you cannot use the NEI to satisfy your obligation to submit point source data.

If we don't receive your emissions information at the time this rule specifies, we'll use our preliminary NEI to produce final emissions estimates for your geographical area.

The CAA provides for certain actions if we do not receive your data, depending on the type of area, the pollutants involved, and the type of inventory submittal in question. All of the emissions information submissions specified by this rule are required submissions under section 110(p) of the CAA. There are also required submissions under the provisions of each existing approved State Implementation Plan, by virtue of section 110(a)(2)(F)(ii). If States do not make the required data submissions, we

may make a finding of failure to implement the SIP even though we have substituted our preliminary estimates for the data you were required to submit but did not. In some cases, for example the three-year periodic emission inventories in ozone nonattainment areas, the submissions are statutorily required SIP revisions. Accordingly, we may also or instead make a finding of failure to submit.

III. Comments Received on the Proposal

The forty-five day comment period for the May 23, 2000 proposal (65 FR 33268) expired on July 7, 2000. We received comments from forty-one respondents. These comments were submitted by twenty-eight State and local agency representatives, eleven industrial organizations and two environmental organizations. We have addressed all comments in detail and placed them in the docket. The major comments and their resolution are discussed below. As an aid to the reader, we have grouped related comments under broad topical headings.

A. Hazardous Air Pollutant Reporting

A number of commenters responded to the section in the preamble of the proposed rule, "What Additional Reporting Requirements Is EPA Considering?". This section discussed how EPA might require the reporting of hazardous air pollutants (HAPs) in the final rule. The predominant comment was that EPA should not include HAP reporting requirements in the final rule until the specific HAP reporting requirements were proposed. We have carefully considered this comment and agree. We have limited this rulemaking to the criteria pollutants including PM_{2.5} and NH₃. We plan to develop HAP reporting measures at a future date. At that time, we will address all other HAP related comments.

B. Criteria Point Source Reporting

We received several comments addressing the proposed applicability threshold (the emission limit at which a State is required to report a facility as a point source), the associated basis for determining applicability (applicability based on either "actual" or "Title V permitted" criteria pollutant emissions), and reporting frequency.

Existing rules require State agencies to annually report criteria pollutant emission inventory information for all qualifying point sources statewide. The reporting thresholds in place prior to this rule were for any point source with actual emissions greater than or equal to any one of the following levels: 100 tons

per year for SO_x, NO_x, VOC, and PM₁₀; 1000 tons per year for CO and 5 tons per year for lead. This rule revises the applicability threshold by assigning the point sources into two categories termed Type A (large point sources) and Type B (all point sources), and reduces the reporting frequency for the smaller sources. Qualification as either a Type A or B source is still based upon a point source's actual emissions of the same criteria pollutants. Under our new terminology, all of the sources that were defined as a point source under the old thresholds are defined as Type B sources. Type A sources are the larger emitting sources and are a subset of the Type B sources. The reporting thresholds for Type A and Type B sources are presented in Table 1 of Appendix A.

Several State and local agencies indicated that the proposed Type A and B categories and associated emission thresholds were confusing and increased their reporting burden. These commenters recommended that we use the CAA's Title V definition of major source instead of the two subsets for determining point source applicability for this rule. (**Note:** for criteria pollutants, a major source under Title V is any stationary source or any group of stationary sources located within a contiguous area and under common control that has the potential to emit 100 tons per year. However, sources located in nonattainment areas can have lower emission thresholds that would define them as major sources.) In addition to lowering the applicability threshold, use of the Title V definition would shift the basis for determining the applicability of the rule from "actual" to "potential" emissions. Commenters advocating the use of the Title V major source definition indicated that they maintain emission inventory data on all of their Title V sources and their reporting burden would increase if we required them to designate sources in their database as Type A (large point sources) vs Type B (all point sources).

We also received comments opposing the use of the Title V major source definition for determining applicability. These commenters indicated that such a requirement would increase their reporting burden since they currently do not gather the required emission inventory information for all of the Title V sources located in their jurisdiction.

In addition to the Title V applicability issue, we received comments, both advocating and opposing, the proposed 10 tpy VOC applicability threshold for sources located in all ozone nonattainment areas. Commenters

opposed to the proposed VOC applicability threshold recommended that the existing 10 tpy level be raised to the major source threshold. (The major source threshold for VOC varies between 10 and 100 tons per year of potential emissions depending on the ozone nonattainment classification.) Other commenters advocated finalizing the proposed 10 tpy VOC applicability threshold.

Existing emission inventory reporting rules require State and local agencies to report emission inventory information for all qualifying point sources on an annual basis. The frequency for reporting emission inventory information was revised in the proposal. As proposed, States would be required to report emission inventory data for Type A (large point sources) on an annual basis and Type B (all point sources) on a 3-year cycle. In response to this revision, we received comments both opposing the reduction and comments advocating further reductions in the reporting frequency. Commenters opposing the reduction recommended that we maintain the existing annual reporting frequency for both Type A and Type B sources. Commenters advocating further reporting reductions wanted to increase the time for reporting Type B sources from 3 to 5 years.

After careful consideration of the comments on the point source applicability and reporting, we have decided to promulgate the proposed Type A (large point sources) and Type B (all point sources) categories and the associated criteria pollutant emission thresholds, except for VOC, and the reporting frequency. Regarding the VOC applicability threshold for sources located in ozone nonattainment areas, we have decided to revise this threshold, proposed as 10 tpy for all ozone nonattainment areas, to be consistent with the CAA definition of major source in the respective ozone nonattainment areas except that it will apply to actual rather than to potential emissions.

When assessing comments on applicability and reporting issues, we considered the fact that this proposal was developed with input from a work group that included representatives from three states (California, New Jersey and Texas) and EPA. In addition to this workgroup, we maintained an active dialog about this proposal with a larger number of States through the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO). The fact that this proposal received strong support from the same State and local

agencies that are responsible for complying with this rule was a factor in our decision to promulgate these revisions. Another factor that affected our decision is that the revisions to both the point source category and reporting frequency were proposed to reduce the reporting burden on State agencies. Because of their large size, the annual requirement for Type A sources will affect relatively few sources, yet capture a large percentage of the emissions that would be reported if all Type B sources reported annually. Thus, we believe that the promulgated revisions to applicability threshold and reporting frequency will not adversely affect our effort to implement the CAA nor diminish the usefulness of emission inventory data accessible to the public.

We are sympathetic with the additional reporting burden that this rule would place on those agencies that currently collect the required items of emission inventory information on all Title V sources, if they were required to remove all data for smaller point sources when preparing their annual report on Type A (large point sources) or their triennial report on Type B (all point sources). Recognizing the need to provide State agencies with additional reporting flexibility and to reduce reporting burden, the final rule is explicit that we will accept emission inventory information submitted by the States that was collected and stored using any more stringent definition of point source and basis for determining source applicability within the Title V definition. Thus, an annual submission of a point source emission inventory that uses the Title V major source definition and potential emissions as qualification factors for inclusion in a State's emission inventory will be accepted.

We believe that the promulgated rule establishes the baseline or minimal data requirements needed to implement the CAA. We believe that requiring State and local agencies to report sources below the baseline established by this rule would increase the reporting burden with only a minimal increase in the usefulness of the inventory. However, this rule is not intended to relax existing reporting thresholds and frequencies established by State and local agencies. We recognize that State and local agencies may need emission information on sources more frequently and below the baseline established by this rule in order to manage their air quality. Thus States and local agencies will have the flexibility to establish lower reporting thresholds and more frequent reporting requirements than those promulgated in this rule.

Several commenters noted that the applicability limits for sources subject to annual reporting specified in § 51.1 were incorrect. We agree with these comments and have appropriately modified the regulatory language.

One commenter noted that many of the data elements required by this rule for a point source are more appropriate for an "emission unit". The commenter recommended that the final rule include thresholds for reporting emission unit or stack data within a point source. After reviewing this comment, we believe that it would be confusing and would add additional reporting burden to require reporting thresholds below the facility level. Therefore, we have decided not to expand the reporting threshold requirements below the facility level. However, if States choose to report at the sub-facility level, Table 2a in Appendix A includes provisions for reporting at the point, process and stack levels.

C. Criteria Area/Mobile/Biogenics Reporting

One commenter noted that we are requiring States to submit criteria pollutant emission estimates for all counties regardless of an area's classification (attainment or nonattainment) and that States, having historically done a good job when concentrating on problem areas, generally do not have the resources to perform a good job on every county especially when estimating area, nonroad, and mobile sources in small metropolitan areas. The commenter recommended that we develop these estimates and not burden the States.

For the 1996 emission inventory, we prepared an estimate of the criteria pollutants from point, area, mobile, nonroad and biogenic sources and provided these data to the States for their review prior to their initiating the emission inventory reporting effort. The States were able to use the EPA estimates as they prepared their 1996 emission inventory. For area sources, mobile sources and biogenic sources, we offered States the option of either notifying us that they agreed with our estimate or revising the estimate and providing us with updated information. The States were still required to provide State developed estimates for point sources. Recognizing the burden to States, we plan to continue to provide States with our emissions estimate for their review and use in future emission inventory preparation.

Another commenter noted that in the proposed preamble section "What happens if EPA doesn't get my agency's emissions Data?" that we state that we

will generate the non-supplied data using our own techniques. The commenter wondered if the State could simply accept the data we developed. The commenter also stated that if we developed data not supplied by the State, that we should label the data as our estimates. The commenter stated that our estimates made without State agreement could be challenged with due cause. We have rewritten this section of the preamble to explicitly state that we will furnish each State with an inventory that we prepared for that State (the National Emission Inventory (NEI)). The States may use the NEI as they prepare their State inventories. The States are strongly encouraged to improve upon our NEI estimates. However, they may choose to resubmit all or part of the NEI to us as their State's inventory. If they do this, then they are certifying that the adopted NEI portions are their estimates. If States ignore the requirements of this rule and do not make a timely inventory submittal to us, we will use our NEI to fill data gaps that will allow us to proceed with our various analyses.

D. $PM_{2.5}$ and Precursors

One commenter stated that we should revise our list of reported pollutants under § 51.20 to include only specific compounds or groups of compounds. This commenter wanted us to remove "PM_{2.5} precursors" from our list of pollutants. We have carefully evaluated this comment and agree that the term "PM_{2.5} precursor" is not precise. There is not an acceptable enforceable definition of this term. When "PM_{2.5} precursor" was used in the proposed rule, the compounds or groups of compounds SO_x, VOC, NO_x and NH₃ were meant. Since the CERR specifically requires the reporting of SO_x, VOC and NO_x, we have dropped the term "PM_{2.5} precursors" and substituted NH₃ in the list of required pollutants. The proposed rule specifically stated that NH₃ was a "PM_{2.5} precursor", so this modification merely simplifies the list of required pollutants; it does not add a new pollutant to the list.

E. Tools

Several commenters stated that the emissions estimation tools were inadequate to produce acceptable emission inventories. These commenters pointed out specific types of estimation tools that they believed were either not available at all or were not adequate. These included EPA-developed models including the MOBILE model, the NONROAD model, and the PART model and emission factors, especially ones for PM_{2.5} and

NH₃. We agree that improvements in many of the emission estimation techniques are highly desirable, particularly in some of the areas identified by the commenters. However, we know that there will always be the opportunity to improve emission estimation techniques and that this is an evolutionary process. The CERR does not require the use of any specific emission estimation technique. There are emission estimation techniques available for all of the required pollutants and their major sources. Therefore, we believe that State or local agencies should be able to make emission inventory submittals that will be acceptable to EPA using current state-of-the-art techniques.

F. Reporting Deadlines/schedules

As proposed, this rule would have been applicable for the 1999 reporting year. Commenters noted that States had already begun compiling their 1999 point source inventories. These commenters would like for us to incorporate a phase-in or implementation schedule into the rule that would allow sufficient time for some agencies to go through a rulemaking process to align their requirements with the new requirements specified by this rule. In addition, lead time is required for some agencies to conform to the standard data format for the first time. After careful consideration of these comments, we have decided to change the first year that States will be required to report under this rule. The first "Annual Cycle Inventory" will be for the year 2001. The first "Three-year Cycle Inventory" will be for the year 2002. Thus when States begin to develop their 2001 annual cycle emission inventory, they will only be required to submit the plant information and emission data for Type A (large point sources) as outlined by this rule. Since the basic requirement for point source reporting is not new, the States should be able to comply.

Another reporting related issue identified by the commenters was the difference in the reporting schedule between the proposed rule which requires all States to report annual emissions for certain sources and the NO_x SIP call rule which requires only affected States to report ozone season emissions. Some commenters recommended that the reporting schedule for these two inventories should be the same. Specifically, the NO_x SIP call specifies that States must report their ozone season emissions inventory for subject facilities within 12 months after the end of the reporting year. The proposed rule would require

States to report both annual and the 3-year cycle inventories for subject facilities within 17 months after the end of the reporting year. The commenters recommended that the reporting schedule for the NO_x SIP call inventory be revised and made consistent with the annual and three-year cycle inventories.

After considering the comment, we have decided to maintain the NO_x SIP call reporting schedule on its 12-month cycle. Maintaining the 12-month reporting requirement for the NO_x SIP call inventory allows both the States and us to take note of higher than planned emissions early enough to give an opportunity for action before the next ozone season. Furthermore, for many large NO_x sources (e.g., utilities) that must report directly to us, the NO_x SIP call rule does not require any State reporting. Thus, the 12-month reporting requirement is not a burden on the States for these sources. We will continue to consider the points made by the commenters in light of the experience that both of us have with the 12 month preparation and submission of annual inventories. We may re-open this requirement for comment at a later date.

One commenter noted that we did not revise 40 CFR 51.321 to agree with the proposed § 51.35. Each of these sections contains due dates which did not agree. We agree with this comment and have rewritten both sections to ensure consistency of the reporting dates.

G. Reporting Stack Data

One commenter noted that while the proposed rule text required the reporting of stack data every three years, the blocks for stack data were not checked in Table 2a for the column "Entire US". We acknowledge that the omission of the checks was a mistake in Table 2a for the data elements: 40. Stack Height, 41. Stack Diameter, 42. Exit Gas Temperature, 43. Exit Gas Velocity and 44. Exit Gas Flow rate for the columns "Entire US". We have corrected this; the column "Entire US" has been relabeled "Every 3 Years".

H. Funding Issues

A number of commenters raised the issue of sufficient funding being available to pay for these new emission inventory requirements. These commenters questioned whether we would make additional monies available to the States specifically to comply with the provisions of the CERR. We are aware that the CERR does apply additional reporting burden on the States. In this preamble, under "IV. Administrative Requirements, C. Paperwork Reduction Act," we have estimated the incremental burden of the

new requirements to be about \$2,133,000 per year nationally. This estimate is based on information supplied by the States to us during the comment period and assumes that the States will be doing new work. However, in this preamble, under “II. Background, What happens if EPA doesn’t get my agency’s data?” we discuss how you may use the EPA-supplied NEI in the preparation of your emission inventory. If you choose to use the NEI estimates for area, mobile and biogenic sources as your State’s estimates, your cost would be limited to the preparation of your point source inventory. We acknowledge that quality of this NEI-based inventory would be lower, but it would satisfy the specific reporting requirements of the CERR. We hope that future budgets at both the Federal and State levels will improve emission inventory funding. For FY 2001, the Congress authorized an increase in the total air grant funds to the States and the multi-State Regional Planning Organizations. Some of these funds were used for emission inventory improvement. However, no new monies are being made available through this rulemaking.

I. General

Several commenters stated that they support EPA’s efforts to consolidate and improve emission inventory reporting on a national level. The respondents benefit from the data collected under the CERR since consistently developed statewide emission inventories assist in regional planning processes, especially for those downwind States whose nonattainment status is caused in part by pollution transported across State boundaries. In addition, the collection of PM_{2.5} and NH₃ data will support future State efforts to reach the visibility improvement goals in Class I areas and to attain the revised PM NAAQS.

We received several comments on our estimate of reporting burden contained in the proposed rule. These comments are addressed in this preamble under “IV. Administrative Requirements, B. Paperwork Reduction Act”.

J. EPA Initiated Changes

In addition to the above changes in response to specific comments, we have made other changes. Most of these changes were editorial to improve clarity or to correct grammatical mistakes. The references to sections 182(a)(3)(A) and 182(a)(3)(B) under “Authority” have been combined to refer to section 182(a)(3) as a simplification. An additional reference under “Authority” has been added for section 110(p). The preamble, Section G.

“Executive Order 13132: Federalism”, has been revised as discussed in that section. In the “Background” section of the preamble, we have added the new subsection “How will this rule affect Tribes?”. This subsection immediately follows “Who will have to comply with the CERR requirements?” and clarifies how Tribes will be affected by this rule. We changed the name of four data elements in Table 2a of Appendix A and relocated one of them in the table. In the proposed rule the data elements were: 7. Federal ID code (plant), 8. Federal ID code (point), 9. Federal ID code (process) and 37. Federal ID code (stack number). There is no “Federal ID code”. These data elements were renamed and numbered as follows: 7. Facility ID code, 8. Point ID code, 9. Process ID code and 10. Stack ID code. In addition, a check mark was inadvertently omitted in the proposed rule for data element “10. Stack ID code” for the column “Annual (Type A Sources)”. We have added this check mark in the final rule. The Glossary in Appendix A was also revised to include these new names.

In the proposed rule under “§ 51.40 In what form should my State report the data to EPA?” and “§ 51.45 Where should my State report the data?”, we proposed two specific electronic format options and identified means of reporting these data to us. Because electronic reporting technology changes frequently and is expected to become even more efficient in the future, we believe that structuring the final rule to limit reporting to these formats in the final rule unnecessarily restricts the flexibility for both the States and EPA. For this reason, we have revised both of these sections to allow for the use of new reporting formats in the future. These changes do not substantively alter this rule since, at this time, we will support both of the formats identified in the proposal; the National Emission Trends (NET) format (renamed as the National Emission Inventory (NEI) format) and Electronic Data Interchange (EDI) format, based on user needs.

We have also made changes to the portions of the rule that were concerned with the NO_x SIP Call reporting requirements. In the proposed rule, the NO_x SIP Call reporting requirements were detailed in the regulatory text and in the tables in Appendix A. However, these requirements are actually established in § 51.122 and are presented in detail. In order to avoid confusion and possible inconsistencies, we have removed the NO_x SIP Call requirements and instead reference them in this rule. Because § 51.122 establishes the reporting requirements, the changes that we have made to the

CERR do not represent new requirements for the States.

K. Changes Resulting from OMB Review

In their review of the Paperwork Reduction Act portion of this rule, the Office of Management and Budget (OMB) has raised concerns about that portion of the Information Collection Request that addresses the reporting of point source PM_{2.5} and NH₃ emissions. Rather than delay the compliance date of the rule, EPA has elected to delay compliance with that portion which concerns the collection of information on point source PM_{2.5} and NH₃ emissions. As modified, the rule now provides that States must commence reporting point source emissions of PM_{2.5} and NH₃ on June 1, 2004 provided that, at least 60 days prior, we have published an approved revised ICR which addresses this subsection of the rule. If we fail to meet the deadline for June 1, 2004 reporting, States must commence reporting point source emissions of PM_{2.5} and NH₃ on the next applicable reporting date that is at least 60 days after we publish an approved ICR addressing this subsection of the rule.

IV. Administrative Requirements

A. Docket

The docket for this regulatory action is A-98-40. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this rulemaking. The principal purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that the parties can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials). The docket is available for public inspection at EPA’s Air Docket, which is listed under the **ADDRESSES** section of this document.

B. 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 obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations have been documented in the public record.

C. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Earlier the Office of Management and Budget approved the current information collection requirements in part 51 under the Paperwork Reduction Act and has assigned OMB control number 2060-0088 (EPA ICR No. 0916.09). The Information Collection Request (ICR) document for the new information collection requirements has been prepared by EPA (ICR No. 0916.10) and a copy may be obtained from Sandy Farmer by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by email at farmer.sandy@epa.gov, or by calling (202) 260-2740. A copy may also be downloaded from the internet at <http://www.epa.gov/icr>. The information requirements are not enforceable until OMB approves them.

Today's action revises part 51 to consolidate old reporting requirements, adds new requirements for PM_{2.5} and NH₃ (Note: Initially PM_{2.5} and NH₃ reporting will only be required for area and mobile sources. States will be required to commence point source reporting of PM_{2.5} and NH₃ at a later date as detailed in § 51.30.) and adds new Statewide reporting requirements for area and mobile sources. Data from new reporting will be used to:

- Support modeling analyses,
- Project future control strategies,
- Track progress to meet requirements of the CAA, and,
- Respond to public inquiries.

The rule contains mandatory information reporting requirements; EPA considers all information reported under this rule to be in the public domain and therefore cannot be treated as confidential.

The information in the following table was summarized from ICR 0916.10 and presents the reporting burden estimates.

BURDEN ESTIMATE SUMMARY

Reporting requirement	Number of respondents	Hours per respondent	Total hours per year	Total labor costs per year	Total annual capital costs	Total annual O&M costs
Current	104	118	12,271	\$365,756	\$218,400	\$12,480
Statewide Reporting, State agencies ...	Varies	1,120	42,630	1,267,126	.....	.....
Statewide Reporting, Local agencies ...	Varies	574	15,022	446,511	.....	.....
PM _{2.5} and NH ₃ Reporting	104	84	8,736	259,667	.....	.....
CERR-Compatible Reporting	Varies	84	5,376	159,795	.....	.....
Total	Varies	1,980	84,035	\$2,498,855	\$218,400	\$12,480

The reporting burden is broken down into "current requirements", "statewide area and mobile source reporting requirements", "PM_{2.5} and NH₃ reporting requirements", and "CERR-compatible reporting". This has been done to highlight the major areas changed by the CERR and to show the impact of these changes on the estimated burden. Significant public comments received concerning each of these components are discussed, as well as any resulting changes made to the burden estimates.

The burden hours estimated for all of the emission inventory reporting requirements in place prior to this rule are labeled "current" and equal 118 hours per respondent per year. Because of the streamlining and flexibility offered by the CERR, these "current" requirements are reduced from the original burden estimate of 212 hours per respondent; a savings of 94 hours per respondent per year. Several commenters had stated that the number

of respondents used to estimate burden in the proposed ICR (*i.e.*, 55) underestimates the total number of respondents, and does not include local air pollution agencies. The EPA agrees that the estimated total number of State, Territorial and local agencies reporting emissions inventory data directly to EPA should be accounted for. This number was estimated to be 104 respondents (*i.e.*, 55 State and Territorial agencies, plus 49 local agencies). As a result, the total burden hours per year for "current" requirements has increased, but the corresponding hours per respondent has actually decreased.

The reporting requirements for statewide area and mobile source reporting add 57,652 hours per year. Several commenters indicated that they believed the burden estimate in the proposed ICR to underestimate the actual reporting burden to States. One commenter stated that "while consolidation may ease the current

burden on some state and local agencies, it will have little effect on others." The EPA acknowledges that certain State or local agencies are farther along than others in developing statewide emission estimation procedures. For States without nonattainment areas, this would be a new requirement, and the burden to comply with this requirement may be significant. Several commenters indicated that the burden to perform this activity will be zero since they are already performing statewide inventories. To respond to these comments, the final ICR presents increased burden estimates for a percentage of State agencies to comply with this provision of the rule, and the remaining state respondents were assumed not to incur additional burden for this activity. Since local agencies are presumed to have jurisdiction over fewer counties than a State agency, the statewide inventory burden for local agencies was estimated to be one-half

the time for the State agencies. In addition, area and mobile source reporting responsibility was only attributed to one-half of the local agency respondents.

The PM_{2.5} and NH₃ reporting requirements add 8,736 hours per year. Several commenters stated that the burden estimate for PM_{2.5} reporting was low and did not take into account the amount of time needed to develop emission factors since very little dependable PM_{2.5} emissions factor information exists. Several commenters, however, indicated that the burden to perform this activity will be zero since they are already compiling PM_{2.5} inventories for their own emissions inventory or modeling purposes. The EPA agrees that burden hours associated with PM_{2.5} reporting were underestimated in the proposed ICR. EPA updated the one-time burden estimate for the final CERR to reflect the time it will take an average State or local agency to generate a more representative PM_{2.5} and NH₃ emissions inventory, and if necessary, to update agency reporting systems to include PM_{2.5} and NH₃. The revised estimate of 8736 hours includes the effort for a State or local agency to update their emissions reporting system to include PM_{2.5} and NH₃. Although States are not required to commence reporting of PM_{2.5} and NH₃ point source emissions until June 1, 2004, this burden estimate includes the effort for a State to update their point source data base in anticipation of this requirement.

Commenters questioned why EPA did not include an estimate for industry respondents for PM_{2.5} reporting, since States may look to industry to provide PM_{2.5} information. Another commenter maintained that it seems inappropriate to include industry respondents when developing the burden estimates. The EPA will include an estimate of the burden hours required by industry, as well as by State and local agencies, to report PM_{2.5} and NH₃ from point sources in a subsequent revised ICR. States will be required to commence point source reporting of PM_{2.5} and NH₃ at a later date as detailed in § 51.30.

Finally, several commenters believed that the capital and operations and maintenance costs were not representative of actual costs that would be incurred by respondents. The EPA agrees and we have increased the costs to reflect a higher number of work stations, and multiplied costs per respondent by an increased number of respondents. In addition, although not included as a capital cost, EPA accounted for the labor hours and associated costs of respondents to convert their reporting systems to CERR-

compatible format, since all agencies' reporting systems are not presently compatible with EPA's NEI Input format.

The total burden impact of the CERR is estimated to be 84,035 hours per year for State, Territorial and local respondents. It should be noted that, of this total of 84,035 hours per year, approximately 34,000 hours per year are associated with start-up costs that will no longer be incurred after the first three years. Thus, after three years, the estimated burden becomes about 50,000 hours per year.

We did not include Tribes in our estimate of burden. While Tribes may report their emissions to us, under the Tribal Authority Rule they are not required to do so. If the Tribes do not provide emissions estimates to us, we will estimate their emissions for them. Generally, the emissions from tribal lands are not major and therefore the burden associated with estimating these emissions is not large.

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

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The OMB control number for the information collection requirements in this rule will be listed in an amendment to [40 CFR part 9 or 48 CFR chapter 15] in a subsequent Federal Register document after OMB approves the ICR.

D. Impact on Small Entities

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the

Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small 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 is defined in the Small Business Administration's (SBA) regulations at 13 CFR 121.201. SBA defines small business by category of business using North American Industry Classification System (NAICS) codes; (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.

The EPA has determined that this final rule will not have a significant economic impact on a substantial number of small entities. As stated in the preamble under "Who will have to comply with the CERR requirements?" and in the rule under § 51.1, the rule applies only to State agencies, which do not constitute small entities within the meaning of the RFA.

E. Executive Order 13045: Children's Health Protection

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62FR19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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 Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it is based on the need for information to characterize health and safety risks themselves.

F. The National Technology Transfer and Advancement Act

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 standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

G. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments

to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The additional work required by this rule takes advantage of information already in the possession of reporting groups. Using existing data leverages past work and reduces the burden of this rule. This conclusion is supported by the analysis done in support of EPA ICR No. 0916.10, which shows that total costs will be about \$2,730,000. The EPA has also determined that this rule does not apply to small government entities. As discussed in this preamble under section "D. Impact on Small Entities", this rule applies only to State governments. Thus, today's rule is not subject to the requirements of sections 202, 203 and 205 of the UMRA.

H. 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 Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management

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

In the proposed rule (65 FR 33273), EPA proposed to conclude that this rule did have federalism implications. This was based on the fact the proposed rule would require States to report their emissions Statewide and to report PM_{2.5} and NH₃ emissions. It was also assumed that since such reporting may impose direct costs on State or local governments, and since the Federal government will not provide the funds necessary to pay those costs, that the federalism provisions would apply. The EPA has reconsidered this position. The federalism provisions are intended to apply to rules that substantially alter the relationship between the Federal Government and State governments. This rule in large measure consolidates pre-existing reporting requirements and the incremental burden of the new requirements is about \$2,133,000 annually. While this rule will impact State governments by imposing new emission inventory reporting requirements, EPA does not believe that this causes a substantial change in 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

I. 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. The Tribal Authority Rule means that Tribes cannot be required to report their emissions to us. Thus, Executive Order 13175 does not apply to this rule.

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, “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. This rule defines the requirements for the reporting of emission inventories by State and local agencies to EPA. We do not believe that this rule will effect the supply, production, availability, cost or use on energy in the United States. Further, we have concluded that this rule is not likely to have any adverse energy effects.

K. Congressional Review Act

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

List of Subjects in 40 CFR Part 51

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

Dated: May 23, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401—7671q.

2. Part 51 is amended by adding subpart A to read as follows:

Subpart A—Emission Inventory Reporting Requirements

General Information for Inventory Preparers
Sec.

51.1 Who is responsible for actions described in this subpart?

51.5 What tools are available to help prepare and report emissions data?

51.10 How does my State report emissions that are required by the NO_x SIP Call?

Specific Reporting Requirements

51.15 What data does my State need to report to EPA?

51.20 What are the emission thresholds that separate point and area sources?

51.25 What geographic area must my State’s inventory cover?

51.30 When does my State report the data to EPA?

51.35 How can my State equalize the effort for annual reporting?

51.40 In what form should my State report the data to EPA?

51.45 Where should my State report the data?

Appendix A to Subpart A of Part 51—Tables and Glossary

Appendix B to Subpart A of Part 51 [Reserved]

Subpart A—Emission Inventory Reporting Requirements

General Information for Inventory Preparers

§ 51.1 Who is responsible for actions described in this subpart?

State agencies whose geographic coverage include any point, area, mobile, or biogenic sources must inventory these sources and report this information to EPA.

§ 51.5 What tools are available to help prepare and report emissions data?

We urge your State to use estimation procedures described in documents

from the Emission Inventory Improvement Program (EIIP). These procedures are standardized and ranked according to relative uncertainty for each emission estimating technique. Using this guidance will enable others to use your State’s data and evaluate its quality and consistency with other data.

§ 51.10 How does my State report emissions that are required by the NO_x SIP Call?

The States and the District of Columbia that are subject to the NO_x SIP Call (§ 51.121) should report their emissions under the provisions of § 51.122. To avoid confusion, these requirements are not repeated here.

Specific Reporting Requirements

§ 51.15 What data does my State need to report to EPA?

(a) Pollutants. Report actual emissions of the following (see Glossary to Appendix A to this subpart for precise definitions as required):

(1) Required Pollutants:

(i) Sulfur oxides.

(ii) VOC.

(iii) Nitrogen oxides.

(iv) Carbon monoxide.

(v) Lead and lead compounds.

(vi) Primary PM_{2.5}.

(vii) Primary PM₁₀.

(viii) NH₃.

(2) Optional Pollutant:

(i) Primary PM.

(ii) [Reserved]

(b) Sources. Emissions should be reported from the following sources:

(1) Point.

(2) Area.

(3) Onroad mobile.

(4) Nonroad mobile.

(5) Biogenic.

(c) Supporting information. Report the data elements in Tables 2a through 2d of Appendix A to this subpart.

Depending on the format you choose to report your State data, additional information not listed in Tables 2a through 2d will be required. We may ask you for other data on a voluntary basis to meet special purposes.

(d) Confidential data. We don’t consider the data in Tables 2a through 2d of Appendix A to this subpart confidential, but some States limit release of this type of data. Any data that you submit to EPA under this rule will be considered in the public domain and cannot be treated as confidential. If Federal and State requirements are inconsistent, consult your EPA Regional Office for a final reconciliation.

§ 51.20 What are the emission thresholds that separate point and area sources?

(a) All anthropogenic stationary sources must be included in your

inventory as either point or area sources.

(b) See Table 1 of Appendix A to this subpart for minimum reporting thresholds on point sources.

(c) Your State has two alternatives to the point source reporting thresholds in paragraph (b) of this section:

(1) You may choose to define point sources by the definition of a major source used under CAA Title V, see 40 CFR 70.2.

(2) If your State has lower emission reporting thresholds for point sources than paragraph (b) of this section, then you may use these in reporting your emissions to EPA.

(d) All stationary sources that have actual emissions lower than the thresholds specified in paragraphs (b) and (c) of this section, should be reported as area sources.

§ 51.25 What geographic area must my State's inventory cover?

Because of the regional nature of these pollutants, your State's inventory must be statewide, regardless of an area's attainment status.

§ 51.30 When does my State report the data to EPA?

Your State is required to report two basic types of emission inventories to us: Annual Cycle Inventory; and Three-year Cycle Inventory.

(a) Annual cycle. You are required to report annually data from Type A (large) point sources. Except as provided in paragraph (e) of this section, the first annual cycle inventory will be for the year 2001 and must be submitted to us within 17 months, i.e., by June 1, 2003. Subsequent annual cycle inventories will be due 17 months following the end of the reporting year. See Table 2a of Appendix A to this subpart for the specific data elements to report annually.

(b) Three-year cycle. You are required to report triennially, data for Type B (all) point sources, area sources and mobile sources. Except as provided in paragraph (e) of this section, the first three-year cycle inventory will be for the year 2002 and must be submitted to us within 17 months, i.e., by June 1, 2004. Subsequent three-year cycle inventories will be due 17 months following the end of the reporting year. See Tables 2a, 2b and 2c of Appendix A to this subpart for the specific data elements that must be reported triennially.

(c) NO_x SIP call. There are specific annual and three-year reporting requirements for States subject to the NO_x SIP call. See § 51.122 for these requirements.

(d) Biogenic emissions. Biogenic emissions are part of your 3-year cycle inventory. Your State must establish an initial baseline for biogenic emissions that is due as specified under paragraph (b) of this section. Your State need not submit more biogenic data unless land use characteristics or the methods for estimating emissions change substantially. If either of these changes, your State must report the biogenic emission data elements shown in Table 2d of Appendix A to this subpart. Report these data elements 17 months after the end of the reporting year.

(e) Point Sources. States must commence reporting point source emissions of PM_{2.5} and NH₃ on June 1, 2004 unless that date is less than 60 days after EPA publishes an approved Information Collection Request (ICR) addressing this section of the rule. If EPA fails to publish an approved ICR 60 days in advance of June 1, 2004, States must commence reporting point source emissions of PM_{2.5} and NH₃ on the next annual or triennial reporting date (as appropriate) that is at least 60 days after EPA publishes an approved ICR addressing this section.

§ 51.35 How can my State equalize the effort for annual reporting?

(a) Compiling a 3-year cycle inventory means much more effort every three years. As an option, your State may ease this workload spike by using the following approach:

(1) Annually collect and report data for all Type A (large) point sources (This is required for all Type A point sources).

(2) Annually collect data for one-third of your smaller point sources (Type B point sources minus Type A (large) point sources). Collect data for a different third of these sources each year so that data has been collected for all of the smaller point sources by the end of each three-year cycle. You may report these data to EPA annually, or as an option you may save three years of data and then report all of the smaller point sources on the three-year cycle due date.

(3) Annually collect data for one-third of the area, nonroad mobile, onroad mobile and, if required, biogenic sources. You may report these data to EPA annually, or as an option you may save three years of data and then report all of these data on the three-year cycle due date.

(b) For the sources described in paragraph (a) of this section, your State will therefore have data from three successive years at any given time, rather than from the single year in which it is compiled.

(c) If your State chooses the method of inventorying one-third of your

smaller point sources and 3-year cycle area, nonroad mobile, onroad mobile sources each year, your State must compile each year of the three-year period identically. For example, if a process hasn't changed for a source category or individual plant, your State must use the same emission factors to calculate emissions for each year of the three-year period. If your State has revised emission factors during the three years for a process that hasn't changed, resubmit previous year's data using the revised factor. If your State uses models to estimate emissions, you must make sure that the model is the same for all three years.

(d) If your State chooses the method of inventorying one-third of your smaller point sources and 3-year cycle area, nonroad mobile, onroad mobile sources each year and reporting them on the 3-year cycle due date, the first required date for you to report on all such sources will be June 1, 2004 as specified in § 51.25. You can satisfy the 2004 reporting requirement by either: Starting to inventory one third of your sources in 2000; or doing a one-time complete 3-year cycle inventory for 2002, then changing to the option of inventorying one third of your sources for subsequent years.

(e) If your State needs a new reference year emission inventory for a selected pollutant, your State can't use these optional reporting frequencies for the new reference year.

(f) If your State is a NO_x SIP call State, you can't use these optional reporting frequencies for NO_x SIP call reporting.

§ 51.40 In what form should my State report the data to EPA?

You must report your emission inventory data to us in electronic form. We support specific electronic data reporting formats and you are required to report your data in a format consistent with these. Because electronic reporting technology continually changes, contact the Emission Factor and Inventory Group (EFIG) for the latest specific formats. You can find information on the current formats at the following Internet address: <http://www.epa.gov/ttn/chief>. You may also call our Info CHIEF help desk at (919) 541-1000 or email to info.chief@epa.gov.

§ 51.45 Where should my State report the data?

(a) Your State submits or reports data by providing it directly to EPA.

(b) The latest information on data reporting procedures is available at the

following Internet address: <http://www.epa.gov/ttn/chief>.

You may also call our Info CHIEF help desk at (919)541-1000 or email to info.chief@epa.gov.

**Appendix A to Subpart A of Part 51—
Tables and Glossary**

TABLE 1.—MINIMUM POINT SOURCE REPORTING THRESHOLDS BY POLLUTANT(tpy ¹)

Pollutant	Annual cycle (type A sources)	Three-year cycle	
		Type B sources ²	NAA ³
1. SO _x	≥2500	≥100	≥100
2. VOC	≥250	≥100	O ₃ (moderate)≥100
3. VOC .....	.....	.....	O ₃ (serious)≥50
4. VOC .....	.....	.....	O ₃ (severe)≥25
5. VOC .....	.....	.....	O ₃ (extreme)≥10
6. NO _x	≥2500	≥100	≥100
7. CO	≥2500	≥1000	O ₃ (all areas)≥100
8. CO .....	.....	.....	CO (all areas)≥100
9. Pb .....	.....	≥5	≥5
10. PM ₁₀	≥250	≥100	PM ₁₀ (moderate)≥100
11. PM ₁₀ .....	.....	.....	PM ₁₀ (serious)≥70
12. PM _{2.5}	≥250	≥100	≥100
13. NH ₃	≥250	≥100	≥100

¹ tpy = tons per year of actual emissions.

² Type A sources are a subset of the Type B sources and are the larger emitting sources by pollutant.

³ NAA = Nonattainment Area. Special point source reporting thresholds apply for certain pollutants by type of nonattainment area. The pollutants by nonattainment area are: Ozone: VOC, NO_x, CO; CO: CO; PM₁₀: PM₁₀.

TABLE 2A.—DATA ELEMENTS THAT STATES MUST REPORT FOR POINT SOURCES

Data elements	Annual (Type A sources)	Every 3 years (Type B sources and NAAs)
1. Inventory year	✓	✓
2. Inventory start date	✓	✓
3. Inventory end date	✓	✓
4. Inventory type	✓	✓
5. State FIPS code	✓	✓
6. County FIPS code	✓	✓
7. Facility ID code	✓	✓
8. Point ID code	✓	✓
9. Process ID code	✓	✓
10. Stack ID code	✓	✓
11. Site name	✓	✓
12. Physical address	✓	✓
13. SCC or PCC	✓	✓
14. Heat content (fuel) (annual average)	✓	✓
15. Ash content (fuel) (annual average)	✓	✓
16. Sulfur content (fuel) (annual average)	✓	✓
17. Pollutant code	✓	✓
18. Activity/throughput (annual)	✓	✓
19. Activity/throughput (daily)	✓	✓
20. Work weekday emissions	✓	✓
21. Annual emissions	✓	✓
22. Emission factor	✓	✓
23. Winter throughput (%)	✓	✓
24. Spring throughput (%)	✓	✓
25. Summer throughput (%)	✓	✓
26. Fall throughput (%)	✓	✓
27. Hr/day in operation	✓	✓
28. Start time (hour)	✓	✓
29. Day/wk in operation	✓	✓
30. Wk/yr in operation	✓	✓
31. X stack coordinate (latitude)	✓
32. Y stack coordinate (longitude)	✓
33. Stack Height	✓
34. Stack diameter	✓
35. Exit gas temperature	✓
36. Exit gas velocity	✓
37. Exit gas flow rate	✓
38. SIC/NAICS	✓
39. Design capacity	✓
40. Maximum nameplate capacity	✓
41. Primary control eff (%)	✓

TABLE 2A.—DATA ELEMENTS THAT STATES MUST REPORT FOR POINT SOURCES—Continued

Data elements	Annual (Type A sources)	Every 3 years (Type B sources and NAAs)
42. Secondary control eff (%)	✓
43. Control device type	✓
44. Rule effectiveness (%)	✓

TABLE 2B.—DATA ELEMENTS THAT STATES MUST REPORT FOR AREA AND NONROAD MOBILE SOURCES

Data elements	Every 3 years
1. Inventory year	✓
2. Inventory start date	✓
3. Inventory end date	✓
4. Inventory type	✓
5. State FIPS code	✓
6. County FIPS code	✓
7. SCC or PCC	✓
8. Emission factor	✓
9. Activity/throughput level (annual)	✓
10. Total capture/control efficiency (%)	✓
11. Rule effectiveness (%)	✓
12. Rule penetration (%)	✓
13. Pollutant code	✓
14. Summer/winter work week-day emissions	✓
15. Annual emissions	✓
16. Winter throughput (%)	✓
17. Spring throughput (%)	✓
18. Summer throughput (%)	✓
19. Fall throughput (%)	✓
20. Hrs/day in operation	✓
21. Days/wk in operation	✓
22. Wks/yr in operation	✓

TABLE 2C.—DATA ELEMENTS THAT STATES MUST REPORT FOR ONROAD MOBILE SOURCES

Data elements	Every 3 years
1. Inventory year	✓
2. Inventory start date	✓
3. Inventory end date	✓
4. Inventory type	✓
5. State FIPS code	✓
6. County FIPS code	✓
7. SCC or PCC	✓
8. Emission factor	✓
9. Activity (VMT by Roadway Class)	✓
10. Pollutant code	✓
11. Summer/winter work week-day emissions	✓
12. Annual emissions	✓

TABLE 2D.—DATA ELEMENTS THAT STATES MUST REPORT FOR BIOGENIC SOURCES

Data elements	Every 3 years
1. Inventory year	✓

TABLE 2D.—DATA ELEMENTS THAT STATES MUST REPORT FOR BIOGENIC SOURCES—Continued

Data elements	Every 3 years
2. Inventory start date	✓
3. Inventory end date	✓
4. Inventory type	✓
5. State FIPS code	✓
6. County FIPS code	✓
7. SCC or PCC	✓
8. Pollutant code	✓
9. Summer/winter work week-day emissions	✓
10. Annual emissions	✓

Glossary

Activity rate/throughput (annual)—A measurable factor or parameter that relates directly or indirectly to the emissions of an air pollution source. Depending on the type of source category, activity information may refer to the amount of fuel combusted, raw material processed, product manufactured, or material handled or processed. It may also refer to population, employment, number of units, or miles traveled. Activity information is typically the value that is multiplied against an emission factor to generate an emissions estimate.

Activity rate/throughput (daily)—The beginning and ending dates and times that define the emissions period used to estimate the daily activity rate/throughput.

Annual emissions—Actual emissions for a plant, point, or process—measured or calculated that represent a calendar year.

Area sources—Area sources collectively represent individual sources that have not been inventoried as specific point, mobile, or biogenic sources. These individual sources treated collectively as area sources are typically too small, numerous, or difficult to inventory using the methods for the other classes of sources.

Ash content—Inert residual portion of a fuel.

Biogenic sources—Biogenic emissions are all pollutants emitted from non-anthropogenic sources. Example sources include trees and vegetation, oil and gas seeps, and microbial activity.

Control device type—The name of the type of control device (e.g., wet scrubber, flaring, or process change).

County FIPS Code—Federal Information Placement System (FIPS) is the system of unique numeric codes the government developed to identify States, counties and parishes for the entire United States, Puerto Rico, and Guam.

Day/wk in operations—Days per week that the emitting process operates—average over the inventory period.

Design capacity—A measure of the size of a point source, based on the reported maximum continuous capacity of the unit.

Emission factor—Ratio relating emissions of a specific pollutant to an activity or material throughput level.

Material flow rate—Numeric value of stack gas's flow rate.

Exit gas temperature—Numeric value of an exit gas stream's temperature.

Exit gas velocity—Numeric value of an exit gas stream's velocity.

Facility ID code—Unique code for a plant or facility, containing one or more pollutant-emitting sources. This is the data element in Appendix A, Table 2a, that is defined elsewhere in this glossary as a "point source".

Fall throughput(%)—Part of the throughput for the three Fall months (September, October, November). This expresses part of the annual activity information based on four seasons—typically spring, summer, fall, and winter. It can be a percentage of the annual activity (e.g., production in summer is 40% of the year's production) or units of the activity (e.g., out of 600 units produced, spring = 150 units, summer = 250 units, fall = 150 units, and winter = 50 units).

Heat content—The amount of thermal heat energy in a solid, liquid, or gaseous fuel. Fuel heat content is typically expressed in units of Btu/lb of fuel, Btu/gal of fuel, joules/kg of fuel, etc.

Hr/day in operations—Hours per day that the emitting process operates—average over the inventory period.

Inventory end date—Last day of the inventory period.

Inventory start date—First day of the inventory period.

Inventory type—Type of inventory represented by data (i.e., point, 3-year cycle, daily).

Inventory year—The calendar year for which you calculated emissions estimates.

Lead (Pb)—As defined in 40 CFR 50.12, lead should be reported as elemental lead and its compounds.

Maximum nameplate capacity—A measure of a unit's size that the manufacturer puts on the unit's nameplate.

Mobile source—A motor vehicle, nonroad engine or nonroad vehicle.

- A "motor vehicle" is any self-propelled vehicle used to carry people or property on a street or highway.

- A "nonroad engine" is an internal combustion engine (including fuel system) that is not used in a motor vehicle or vehicle only used for competition, or that is not affected by sections 111 or 202 of the CAA.

• A “nonroad vehicle” is a vehicle that is run by a nonroad engine and that is not a motor vehicle or a vehicle only used for competition.

PM (Particulate Matter)—Particulate matter is a criteria air pollutant. For the purpose of this subpart, the following definitions apply:

(1) *Primary PM*: Particles that enter the atmosphere as a direct emission from a stack or an open source. It is comprised of two components: Filterable PM and Condensable PM. (As specified in § 51.15 (a)(2), these two PM components are the components measured by a stack sampling train such as EPA Method 5 and have no upper particle size limit.)

(2) *Filterable PM*: Particles that are directly emitted by a source as a solid or liquid at stack or release conditions and captured on the filter of a stack test train.

(3) *Condensible PM*: Material that is vapor phase at stack conditions, but which condenses and/or reacts upon cooling and dilution in the ambient air to form solid or liquid PM immediately after discharge from the stack.

(4) *Secondary PM*: Particles that form through chemical reactions in the ambient air well after dilution and condensation have occurred. Secondary PM is usually formed at some distance downwind from the source. Secondary PM should NOT be reported in the emission inventory and is NOT covered by this subpart.

(5) *Primary PM_{2.5}*: Also PM_{2.5} (or Filterable PM_{2.5} and Condensable PM individually. Note that all Condensable PM is assumed to be in the PM_{2.5} size fraction)—Particulate matter with an aerodynamic diameter equal to or less than 2.5 micrometers.

(6) *Primary PM₁₀*: Also PM₁₀ (or Filterable PM₁₀ and Condensable PM individually)—Particulate matter with an aerodynamic diameter equal to or less than 10 micrometers.

PCC—Process classification code. A process-level code that describes the equipment or operation which is emitting pollutants. This code is being considered as a replacement for the SCC.

Physical address—Street address of a facility. This is the address of the location where the emissions occur; not, for example, the corporate headquarters.

Point ID code—Unique code for the point of generation of emissions, typically a physical piece of equipment.

Point source—Point sources are large, stationary (non-mobile), identifiable sources of emissions that release pollutants into the atmosphere. As used in this rule, a point source is defined as a facility that annually emits more than a “threshold” value as defined under § 51.20.

Pollutant code—A unique code for each reported pollutant assigned in the Emission Inventory Improvement Program (EIIP) Data Model. The EIIP model was developed to promote consistency in organizations sharing emissions data. The model uses character names for criteria pollutants and Chemical Abstracts Service (CAS) numbers for all other pollutants. You may be using SAROAD codes for pollutants, but you should be able to map them to the pollutant codes in the EIIP Data Model.

Process ID code—Unique code for the process generating the emissions, typically a description of a process.

Roadway class—A classification system developed by the Federal Highway Administration that defines all public roadways as to type. Currently there are four roadway types: (1) Freeway, (2) freeway ramp, (3) arterial/collector and (4) local.

Rule effectiveness (RE)—How well a regulatory program achieves all possible emission reductions. This rating reflects the assumption that controls typically aren't 100 percent effective because of equipment downtime, upsets, decreases in control efficiencies, and other deficiencies in emission estimates. RE adjusts the control efficiency.

Rule penetration—The percentage of an area source category covered by an applicable regulation.

SCC—Source classification code. A process-level code that describes the equipment and/or operation which is emitting pollutants.

Seasonal activity rate/throughput—A measurable factor or parameter that relates directly or indirectly to the pollutant season emissions of an air pollution source.

Depending on the type of source category, activity information may refer to the amount of fuel combusted, raw material processed, product manufactured, or material handled or processed. It may also refer to population, employment, number of units, or miles traveled. Activity information is typically the value that is multiplied against an emission factor to generate an emissions estimate.

Seasonal fuel heat content—The amount of thermal heat energy in a solid, liquid, or gaseous fuel used during the pollutant season. Fuel heat content is typically expressed in units of Btu/lb of fuel, Btu/gal of fuel, joules/kg of fuel, etc.

Secondary control eff (%)—The emission reduction efficiency of a secondary control device. Control efficiency is usually expressed as a percentage or in tenths.

SIC/NAICS—Standard Industrial Classification code. NAICS (North American Industry Classification System) codes will replace SIC codes. U.S. Department of Commerce's code for businesses by products or services.

Site name—The name of the facility.
Spring throughput (%)—Part of throughput or activity for the three spring months (March, April, May). See the definition of Fall Throughput.

Stack diameter—A stack's inner physical diameter.

Stack height—A stack's physical height above the surrounding terrain.

Stack ID code—Unique code for the point where emissions from one or more processes release into the atmosphere.

Start time (hour)—Start time (if available) that you used to calculate the emissions estimates.

State FIPS Code—Federal Information Placement System (FIPS) is the system of unique numeric codes the government developed to identify States, counties and parishes for the entire United States, Puerto Rico, and Guam.

Sulfur content—Sulfur content of a fuel, usually expressed as percent by weight.

Summer throughput (%)—Part of throughput or activity for the three summer months (June, July, August). See the definition of Fall Throughput.

Summer/winter work weekday emissions—Average day's emissions for a typical day. Ozone daily emissions = summer work weekday; CO and PM daily emissions = winter work weekday.

Total capture/control efficiency—The emission reduction efficiency of a primary control device, which shows the amount controls or material changes reduce a particular pollutant from a process' emissions. Control efficiency is usually expressed as a percentage or in tenths.

Type A source—Large point sources with actual annual emissions greater than or equal to any of the emission thresholds listed in Table 1 for Type A sources.

Type B source—Point sources with actual annual emissions during any year of the three year cycle greater than or equal to any of the emission thresholds listed in Table 1 for Type B sources. Type B sources include all Type A sources.

VMT by Roadway Class—Vehicle miles traveled (VMT) expresses vehicle activity and is used with emission factors. The emission factors are usually expressed in terms of grams per mile of travel. Because VMT doesn't correlate directly to emissions that occur while the vehicle isn't moving, these nonmoving emissions are incorporated into the emission factors in EPA's MOBILE Model.

VOC—Volatile Organic Compounds. The EPA's regulatory definition of VOC is in 40 CFR 51.100.

Winter throughput (%)—Part of throughput or activity for the three winter months (December, January, February, all from the same year, e.g., Winter 2000 = January 2000 + February, 2000 + December 2000). See the definition of Fall Throughput.

Wk/yr in operation—Weeks per year that the emitting process operates.

Work Weekday—Any day of the week except Saturday or Sunday.

X stack coordinate (latitude)—An object's north-south geographical coordinate. Y stack coordinate (longitude)—An object's east-west geographical coordinate.

Appendix B to Subpart A of Part 51— [Reserved]

Subpart Q—[Amended]

3. Section 51.321 is revised to read as follows:

§ 51.321 Annual source emissions and State action report.

The State agency shall report to the Administrator (through the appropriate Regional Office) information as specified in §§ 51.322 through 51.326.

4. Section 51.322 is revised to read as follows:

§ 51.322 Sources subject to emissions reporting.

The requirements for reporting emissions data under the plan are in subpart A of this part 51.

5. Section 51.323 is revised to read as follows:

§ 51.323 Reportable emissions data and information.

The requirements for reportable emissions data and information under the plan are in subpart A of this part 51.

[FR Doc. 02-14037 Filed 6-7-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 207-0336a; FRL-7224-1]

Revisions to the California State Implementation Plan, Great Basin Unified Air Pollution Control District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Great Basin Unified Air Pollution Control District (GBUAPCD) portion and the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern the emission of particulate matter (PM-10) from GBAPCD open burning/open

detonation (OB/OD) of propellants, explosives, and pyrotechnics (PEP); from SCAQMD storage, handling, and transport of coke, coal and sulfur; and from SCAQMD paved and unpaved roads and livestock operations. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on August 9, 2002, without further notice, unless EPA receives adverse comments by July 10, 2002. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions and TSD at the following locations:

- Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington DC 20460.
- California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Great Basin Unified Air Pollution Control District, 157 Short Street, Bishop, CA 93514.

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX; (415) 947-4118.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the date that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
GBUAPCD	432	Open Burn/Open Detonation Operations on Military Bases.	05/08/96	03/10/98
SCAQMD	1158	Storage, Handling, and Transport of Coke, Coal and Sulfur.	06/11/99	10/29/99
SCAQMD	1186	PM ₁₀ Emissions from Paved and Unpaved Roads and Livestock Operations.	09/10/99	01/21/00

On May 21, 1998, December 16, 1999, and March 1, 2000, these submittals were found to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

GBUAPCD Rule 432 is a new rule. We approved into the SIP on January 15, 1987 (52 FR 1627) a version of SCAQMD Rule 1158, adopted on December 2, 1983. We approved into the SIP on February 17, 2000 (65 FR 8057) a version of SCAQMD Rule 1186, adopted on December 11, 1998.

C. What Are the Changes in the Submitted Rules?

GBUAPCD Rule 432 is a new rule for open burning/open detonation of propellants, explosives, and pyrotechnics (PEP) at military bases that includes the following provisions:

- Burn plans are required that specify detonation or combustion methods and limit the category and amount of PEP destroyed in burn operations.
- OB/OD operations are not allowed when smoke can contribute to an exceedance of the NAAQS or cause a public nuisance. Burning is prohibited on "No-Burn Days" determined by the California Air Resources Board.

- PEP destroyed in OB/OD operations cannot contain other hazardous waste.
 - PEP destroyed in OB/OD operations must be in a condition to minimize smoke emission.
 - OB/OD must be limited to PEP generated from operations at the military base where destroyed.
 - Records of OB/OD must be retained for five years.
- SCAQMD Rule 1158 changes are as follows:
- An existing exemption to requiring the enclosure of open coke storage piles is deleted.
 - The rule is expanded to include coverage of coal and sulfur in addition to coke.

- A 10% opacity (1/2 Ringelmann) visible emissions standard is added.
 - A requirement to pave and maintain surfaces, roads, and vehicle movement areas within the facility where material accumulation occurs is added.
 - Street sweeping frequencies or silt loading limits for paved roads and vehicle movement areas inside and outside the facility for a distance of one quarter mile are added.
 - A spillage cleanup requirement is added.
 - A cleanliness standard for trucks leaving the facility is added.
 - A requirement that trucks/trailers used to transport materials be covered and leak resistant is added.
 - A requirement that truck unloading be conducted in an enclosed structure and controlled by wetting or venting to permitted air pollution control equipment is added.
 - Requirements for controlling or covering material accumulations within the facility are added.
 - Requirements for new or replacement conveyors to be enclosed and for existing unenclosed conveyors to only transfer material moistened to a specific moisture content are added.
 - Requirements for material transfer points are added.
 - Requirements for loading material onto ships and truck are added.
 - Requirements for open storage of existing coal and prilled sulfur piles are added.
 - A requirement that new storage piles must be enclosed is added.
 - Recordkeeping requirements are extended from one to two years.
 - A requirement that facilities not electing to conduct street sweeping conduct periodic silt loading tests and quarterly truck cleanliness tests is added.
- SCAQMD Rule 1186 changes are as follows:
- A District test protocol and standards for certifying street sweepers are added.
 - The requirements that government agencies acquire certified street sweepers for paved roads after January 1, 2000 and operate them according to the manufacturer's specifications are added.
 - The requirement that manufacturers use the District test protocol to obtain the Executive Officer's certification of their street sweepers is added.
 - The exemption for sources with an approved Rule 1158 plan is deleted.

- Definitions related to street sweepers are added.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193). Section 189(a) of the CAA requires moderate PM-10 nonattainment areas with significant PM-10 sources to adopt reasonably available control measures (RACM), including reasonably available control technology (RACT). Section 189(b) of the CAA requires serious PM-10 nonattainment areas with significant PM-10 sources to adopt best available control measures (BACM), including best available control technology (BACT). RACM/RACT and BACM/BACT are not required for source categories that are not significant (*de minimis*). See *Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*, 59 FR 41998 (August 16, 1994).

The GBUAPCD portion (Inyo County) of the Searles Valley Planning Area is a moderate PM-10 nonattainment area. The emission activities subject to GBUAPCD Rule 432 at China Lake, California contribute a small (1.4%) but not insignificant amount of the total PM-10 emissions in Inyo County according to the *PM-10 State Implementation Plan for the Searles Valley Planning Area* (November 1991). Therefore, GBUAPCD Rule 432 must fulfill the requirements of RACM/RACT.

The SCAQMD is a serious PM-10 nonattainment area. The PM-10 source categories regulated by SCAQMD Rules 1158 and 1186 are significant according to the *SCAQMD Base and Future Year Emission Inventories* (November 1996). Therefore, SCAQMD Rules 1158 and 1186 must fulfill the requirements of BACM/BACT.

The following guidance documents were used for reference:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.
- *PM-10 Guideline Document*, EPA-452/R-93-008 (April 1993).
- *Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*, 59 FR 41998 (August 16, 1994)
- *Fugitive Dust Background Document and Technical Information*

Document for Best Available Control Measures, U.S. EPA (September 1992).

B. Do the Rules Meet the Evaluation Criteria?

We believe the rules are consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and fulfilling RACM/RACT and BACM/BACT. The TSDs have more information on our evaluation.

C. EPA Recommendations To Further Improve the Rules

The SCAQMD Rule 1158 TSD describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rule.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by July 10, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on August 9, 2002. This will incorporate these rules into the federally-enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this direct final rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Background Information

A. Why Were These Rules Submitted?

PM-10 harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM-10 emissions. Table 2 lists some of the national milestones leading to the submittal of local agency PM-10 rules.

TABLE 2.—PM-10 NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the Clean Air Act, as amended in 1977. 43 FR 8964; 40 CFR 81.305.
July 1, 1987	EPA replaced the TSP standards with new PM standards applying only up to 10 microns in diameter (PM-10). 52 FR 24672.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted, Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q.
November 15, 1990	PM-10 areas meeting the qualifications of section 107(d)(4)(B) of the CAA were designated nonattainment by operation of law and classified as moderate pursuant to section 188(a). States are required by section 110(a) to submit rules regulating PM-10 emissions in order to achieve the attainment dates specified in section 188(c).

IV. 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 (Public Law 104-4).

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

CAA. 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 CAA. 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 CAA. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 9, 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, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: May 9, 2002.
Alexis Strauss,
Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the 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 F—California

2. Section 52.220 is amended by adding paragraphs (c)(254)(i)(L), (270)(i)(C)(3), and (278)(i)(A)(2) to read as follows:

§ 52.220 Identification of plan.

- * * * * *
- (c) * * *
- (254) * * *
- (i) * * *
- (L) Great Basin Unified Air Pollution Control District.
- (1) Rule 432, adopted on May 8, 1996.
- * * * * *
- (270) * * *
- (i) * * *
- (C) * * *
- (3) Rule 1158, adopted on June 11, 1999.
- * * * * *
- (278) * * *
- (i) * * *

(A) * * *

(2) Rule 1186, adopted on September 10, 1999.

* * * * *

[FR Doc. 02-14207 Filed 6-7-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[SIP NO. SD-001-0012a; FRL-7216-1]

Approval of an Air Quality Implementation Plan Revision; South Dakota; Rapid City Street Sanding Regulations To Protect the National Ambient Air Quality Standards for PM-10**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: EPA is taking direct final action approving a revision of the Administrative Rules South Dakota (ARSD) Chapter 74 Section 36:17 affecting South Dakota's Air Pollution Control Program for Rapid City, South Dakota. In particular, the revisions are regarding requirements for street sanding and deicing. These regulations were submitted to EPA on January 26, 1996. South Dakota submitted this revision to make the street sanding rules federally enforceable. EPA is approving the revision to Chapter 74 Section 36:17 of the ARSD as part of South Dakota's State Implementation Plan (SIP) under section 110 of the Clean Air Act (CAA).

DATES: This rule is effective on August 9, 2002, without further notice, unless EPA receives adverse comment by July 10, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the *Federal Register* informing the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202 and copies of the Incorporation by Reference material are available at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Copies of the State documents relevant to this action are available for public inspection at the South Dakota Department of Environmental and Natural Resources, Air Quality Program, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501.

FOR FURTHER INFORMATION CONTACT: Mark Komp, EPA, Region VIII, (303) 312-6022 or Laurel Dygowski, EPA, Region VIII, (303) 312-6144.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used, means Environmental Protection Agency.

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- II. Final Action
- III. Administrative Requirements

I. Background Information*A. Events Leading to This Action*

Air quality monitoring for particulates in the Rapid City, South Dakota area in 1992 collected two samples that exceeded the 24-hour National Ambient Air Quality Standard (NAAQS) for particulates less than or equal to 10 microns in size (PM-10). The exceedances occurred on October 13 and 25, 1992 and were later documented to be the result of high winds blowing dust through the Rapid City, South Dakota area. An exceedance is a particulate concentration that is higher than 150 $\mu\text{g}/\text{m}^3$ calculated from a filter sample exposed to ambient air during a 24-hour period. An average of three exceedances over a 3-year period is considered a violation. Exceedances can include those that are expected, based on statistical analysis but not actually measured by the State. The two exceedances from filter samples taken in Rapid City, South Dakota were calculated to be a violation, based on statistical analysis involving the total number of filters exposed.

In a March 25, 1994 letter, South Dakota requested that we grant exceptional event status to these two exceedances rather than declare the area nonattainment for the PM-10 NAAQS. The State asserted that the exceedances were from uncontrollable natural sources, that the Rapid City area had been in the midst of a long-term drought, and winds during the days of the exceedance were high enough to

qualify as an "exceptional event". EPA's exceptional event guidance, 40 CFR part 50, appendix K, describes such events leading to exceedances as rare occurrences not likely to recur. EPA Region VIII concluded that the data could not be excluded from calculating exceedances of the PM-10 NAAQS, and after applying 40 CFR part 50, appendix K, to the data, determined that Rapid City violated the 24-hour PM-10 standard in 1992.

South Dakota's Department of Environment and Natural Resources (DENR) described in the March 25, 1994 letter certain corrective actions that had been taken by Pennington County, businesses, and industry to reduce particulate matter levels in Rapid City. DENR pointed out that these measures had been effective, as no further exceedances of the PM-10 standard had occurred in two and one-half years since the exceedances in 1992.

In recognition of DENR's position, EPA requested, in a letter from William Yellowtail, Regional Administrator, dated July 19, 1995, that the State outline a course of action that would serve as justification for EPA to suspend any further consideration of a nonattainment designation for the area. The course of action was to provide assurance that the State would maintain an adequate air monitoring network in Rapid City and would fulfill a commitment to incorporate into the SIP enforceable regulations that would embody the control strategies currently being implemented in Rapid City for both point and fugitive dust sources.

The State responded by adopting street sanding and deicing regulations for Rapid City and adding fugitive dust control requirements to industrial air quality permits. These permits were later incorporated into operating permits issued by the State under the CAA Title V permit program. South Dakota also expressed its continuing commitment to operate the Rapid City particulate matter monitoring network.

In 1996, a change in our policy related to exceptional events broadened EPA's interpretation of high PM-10 concentrations that are not considered exceedances. The new policy, called the Natural Events Policy, was expressed in a May 30, 1996 memorandum from EPA's former Assistant Administrator for Air and Radiation, Mary Nichols. The Natural Events Policy identified high wind events as one of three categories that affect the PM-10 NAAQS. The policy provides that EPA will exercise its discretion under section 107 (d)(3) of the CAA not to redesignate areas as nonattainment if the State develops and implements a plan to

respond to the health impacts of natural events.

Specifically the guiding principles followed in this policy are:

1. The protection of public health has the highest priority;
2. The public must be informed whenever the air quality in the area is unhealthy;
3. All valid ambient air quality data should be submitted to EPA and made available for public review;
4. State and local agencies must take appropriate and reasonable measures to safeguard public health regardless of the source of emissions;
5. Emission controls should be applied to sources that contribute to exceedances of the PM-10 NAAQS when those controls will result in fewer violations of the standards.

Despite the adoption of street sweeping and deicing regulations and controls on fugitive dust from industrial sources, the Rapid City area monitored PM-10 exceedances in 1996 and 1997. On July 14, 1997, the State sent information to EPA to support a finding that these exceedances were covered by the Natural Events Policy. We reviewed the data and agreed with the State's interpretation.

The State of South Dakota responded to the guiding principles set forth in the Natural Events Policy by developing a Natural Events Action Plan (NEAP). In the plan, the State committed to a public education program, developed Best Available Control Measures (BACM) for sources in the industrial complex in west Rapid City and committed to document all high wind events that occur and send the information to EPA. BACM measures were required to be implemented prior to the end of May 2000, with one exception. Fisher Sand and Gravel had been granted an extension until September 30, 2000, to implement emission controls for the rock crusher. All BACM measures are now in place in the Rapid City area.

Natural events in the future that lead to exceedances must be documented according to the State's NEAP. Sanding and deicing regulations and fugitive dust control measures will become federally enforceable upon EPA approval of the SIP revision and through permits issued under the State's Title V operating permit program respectively.

B. What Action Is EPA Taking?

EPA is approving South Dakota's revision to its SIP regarding the application and removal of street sanding and the application of deicing materials within the city limits of Rapid City. The revision was submitted on

January 22, 1996 and appears in South Dakota's Administrative Rule Chapter 74:36:17.

C. What Is the State Process for Submitting These Materials to EPA?

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan admitted by a State must be adopted after reasonable notice and public hearing. Section 110(1) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). EPA's completeness criteria are set out at 40 CFR part 51, appendix V. EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of submission. This submittal became complete by operation of law on July 22, 1996 in accordance with section 110(k)(1)(B) of the Act.

The South Dakota Board of Minerals and Environments held a public hearing and adopted the Rapid City sanding and deicing regulations on December 21, 1995. The rules became effective at the State level on February 12, 1996.

D. What Was Included in South Dakota's Submittal?

On January 22, 1996, the State of South Dakota submitted a revision to its SIP. The SIP revision consists of street sanding and deicing requirements that apply within the city limits of Rapid City, South Dakota. Sanding materials that do not break down into smaller particles under road traffic are specified for use within Rapid City. In addition, deicing chemicals are to be used to lessen the need for sanding the roads and will be used to the greatest extent possible. The January 22, 1996 submittal includes a letter from Nettie H. Myers, Secretary of the Department of South Dakota's Environment and Natural Resources. The letter makes commitments to requirements described in EPA's letter dated July 19, 1995. These commitments are to maintain a monitoring network for PM-10 in the Rapid City area, and include fugitive dust control plans in Title V permits for

major man-made sources of dust in the Rapid City area.

E. Why Is EPA Approving This Adoption of Administrative Rule Article 74:36:17

We are approving the revision to South Dakota's SIP because the revision is consistent with all requirements of the CAA and with EPA guidance. Specifically, we are approving ARSD Chapter 74:36:17 as part of the SIP section 110 (K) (3) of the CAA.

The effect of this approval is that ARSD Chapter 74:36:17 will be federally enforceable.

II. Final Action

EPA is approving South Dakota's revision to its SIP regarding the application and the removal of street sanding and deicing materials within the city limits of Rapid City, submitted on January 26, 1996. The revision appears in ARSD Chapter 74:36:17.

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act. The South Dakota SIP revisions that are the subject of this document do not interfere with the maintenance of the NAAQS or any other applicable requirement of the Act because the State of South Dakota's street sanding rule is more stringent than what currently exists and this rule will enhance the State's efforts in implementing the Clean Air Act. Therefore, section 110(l) requirements are satisfied.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. South Dakota has had the rulemaking in place for several years with no adverse reaction. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposed rule to approve the SIP revision if adverse comments are filed. This rule will be effective August 9, 2002, without further notice unless the Agency receives adverse comments by July 10, 2002. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. 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 (Public Law 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). 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. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S.

Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 9, 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, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: May 13, 2002.

Robert E. Roberts,

Regional Administrator, Region VIII.

40 CFR part 52, subpart QQ of chapter I, title 40 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 QQ—South Dakota

2. Section 52.2170 is amended by adding paragraph (c)(20) to read as follows:

§ 52.2170 Identification of plan.

* * * * *

(c) * * *

(20) On January 22, 1996, the designee of the Governor of South Dakota submitted provisions in Section 74:36:17 of the Administrative rules of South Dakota. The provisions consist of street sanding requirements that apply within the city limits of Rapid City, South Dakota.

(i) Incorporation by reference.

(A) Administrative Rules of South Dakota, Air Pollution Control Program, Chapter 74:36:17.

(ii) Additional materials.

(A) Letter of March 25, 1994 from South Dakota Department of Environment and Natural Resources discussing whether EPA should designate Rapid City as nonattainment for the PM-10 standard.

(B) Letter of July 19, 1995 from EPA Region VIII discussing with the South Dakota Department of Environment and Natural Resources the exceedances of the PM-10 standard measured in the Rapid City.

(C) Letter of November 16, 1995 from the South Dakota Department of Environment and Natural Resources describing the commitment the State of South Dakota has toward permit exceedances of the PM-10 standard in the future.

(D) Letter of January 22, 1996 from the South Dakota Department of Environment and Natural Resources transmitting Rapid City street sanding requirements.

[FR Doc. 02-14366 Filed 6-7-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 63

[FRL-7223-3]

Approval of the Clean Air Act, Section 112(l), Delegation of Authority to the Oregon Department of Environmental Quality and Lane Regional Air Pollution Authority

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency, Region 10 (EPA) approves the Oregon Department of Environmental Quality's (ODEQ) request, on behalf of itself and the Lane Regional Air Pollution Control Authority (LRAPA), for program approval and delegation of authority to implement and enforce certain National Emission Standards for Hazardous Air Pollutants (NESHAPs).

Pursuant to the authority of section 112(l) of the Act, this approval is based on EPA's finding that state law, regulations, and agency resources meet the requirements for program approval and delegation of authority specified in regulations pertaining to the criteria for delegation common to all approval options, and in applicable EPA guidance (*see* 40 CFR 60.91).

The purpose of this delegation is to acknowledge ODEQ and LRAPA's ability to implement a NESHAP program and to transfer primary implementation and enforcement responsibility from EPA to ODEQ and LRAPA. Although EPA will look to ODEQ and LRAPA as the leads for implementing the delegated NESHAPs in their respective jurisdictions, EPA retains authority under section 113 of the Act to enforce any applicable emission standard or requirement, if needed. With program approval, ODEQ and LRAPA may choose to request newly promulgated or updated standards by way of a streamlined request and approval process, described below.

Concurrent with this direct final rule, EPA is publishing a proposed rule in today's **Federal Register**. If no adverse comments are received in response to the direct final rule, this rule will become final and no further activity is contemplated. If EPA receives adverse comments on the direct final rule, it will be withdrawn and all public comments will be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Any parties interested in

commenting on this action should do so at this time.

DATES: This direct final rule is effective on August 9, 2002, without further notice, unless EPA receives adverse comment by July 10, 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: Written comments should be submitted to the address below:

Jeff KenKnight, Manager, Federal and Delegated Air Programs Unit, Office of Air Quality (OAQ-107), U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553-6641.

Copies of delegation requests and other supporting documentation are available for public inspection at the U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, during normal business hours. Please contact Jeff KenKnight to make an appointment.

FOR FURTHER INFORMATION CONTACT: Jeff KenKnight, Manager, Federal and Delegated Air Programs Unit, Office of Air Quality (OAQ-107), U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553-6641.

SUPPLEMENTARY INFORMATION:

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- I. Background and Purpose
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 - b. What are the requirements for delegation?
 - c. Are there any other requirements tied to NESHAP program delegation?
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IV. Summary

V. Administrative Requirements

I. Background and Purpose

a. What Is the NESHAP Program?

Hazardous air pollutants are defined in the Clean Air Act (Act) as pollutants that threaten human health through inhalation or other type of exposure. These pollutants are commonly referred to as "air toxics" and are listed in section 112(b)(1) of the Act.

National Emission Standards for Hazardous Air Pollutants (NESHAPs) control emissions of hazardous air pollutants from specific source categories and implement the requirements of section 112 of the Act. These standards are found in 40 CFR parts 61 and 63.

Section 112(l) of the Act enables EPA to approve state and local air toxics programs or rules such that these agencies can accept delegation of authority for implementing and enforcing the NESHAPs. Typically, a state or local agency requests delegation based on federal rules adopted unchanged into state or local rules.

b. What Are the Requirements for Delegation?

Requirements for delegation of NESHAPs adopted unchanged into state or local law are set forth in 40 CFR 63.91(d).

c. Are There Any Other Requirements Tied to NESHAP Program Delegation?

The Clean Air Act (CAA) Amendments of 1990 required all State and local permitting authorities to develop operating permits programs that meet the requirements of 40 CFR part 70. EPA gave full approval to Oregon's title V operating permits program in 1995. (*see* 60 FR 50106 (September 28, 1995)).

Interim or final Title V program approval satisfies approval criteria for delegation of the NESHAP program. This is because the authority and enforcement requirements for approval of a part 70 program are equivalent to the requirements for NESHAP delegation found in 40 CFR 63.91(d). Also, the approval of a Title V program already confers the responsibility to implement and enforce all requirements applicable to major sources, including requirements of section 112.

Alternatively, 40 CFR 63.91(d) requires that an agency show it: (1) Has the authority necessary to implement and enforce the NESHAPs and ensure compliance from sources; (2) has the resources and ability to carry out the

responsibility; (3) is capable of assuring expeditious compliance by sources; and (4) is otherwise in compliance with federal requirements.

Once an agency demonstrates that it meets this approval criteria, it need only reference that demonstration and reaffirm it still meets the criteria in future requests for updated delegation.

d. What Is the history of this delegation?

On January 24, 2002, ODEQ submitted a request on behalf of itself and LRAPA for delegation of authority to implement and enforce certain NESHAPs in effect on July 1, 2001. This was a follow-up to an original delegation request submitted November 15, 1993.

EPA considered ODEQ's original 1993 request, including additional supporting materials, and published a **Federal Register** document proposing delegation on January 15, 1997 (see 63 FR 2074). However, EPA did not take final action on this proposal because of EPA's concern that Oregon's Audit Privilege Act, Oregon Revised Statute 468.963 (1993), interfered with Oregon's ability to meet federal requirements for approval of EPA programs, including the NESHAP. During the 2001 Legislative Session, the Oregon Legislature passed House Bill 3536, which amended ORS 468.963 to ensure that the Audit Privilege Law does not apply to criminal investigations or proceedings. These statutory amendments became effective January 1, 2002. With these amendments, the Oregon Audit Privilege law no longer poses a barrier to the delegation of the NESHAPs to Oregon and LRAPA.

e. How Have ODEQ and LRAPA Satisfied the requirements for NESHAP Delegation?

ODEQ's January 24, 2002 submittal consists of a letter of request and supporting documentation, which includes: (1) A copy of state statutes, regulations and requirements that grant authority to implement and enforce a

NESHAP program upon approval; (2) a demonstration that the agency has an approved Title V program; and (3) copies of revised statutes and discussion pertaining to the resolution of audit law and standing issues. ODEQ and LRAPA have met the requirements for delegation because they have full approval of their Title V program.¹

II. EPA Action

a. What Specific Emission Standards Is EPA Delegating to ODEQ and LRAPA?

EPA is delegating certain 40 CFR part 61 and 63 subparts in effect on July 1, 2001, to ODEQ and LRAPA. These are: (1) 40 CFR part 61, subparts A, C, D, E, F, J, L, N, O, P, V, Y, BB, FF; and (2) 40 CFR part 63, subparts A, F, G, H, I, L, M, N, O, Q, R, S, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, LL, MM, OO, PP, QQ, RR, SS, TT, UU, VV, WW, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, RRR, TTT, VVV, XXX, CCCC, GGGG. These subparts are also summarized in the parts 61 and 63 informational tables at the end of this direct final rule.

b. What Specific Standards Is EPA Not Delegating?

Typically, EPA delegates all standards adopted and requested by an air agency and in effect as of a certain date, regardless of whether or not there are any applicable sources within that agency's jurisdiction. As an exception, EPA does not usually delegate subparts pertaining to radon or radionuclides (part 61, subparts B, Q, H, I, K, R, and W). This is due to the specific expertise required to implement them. For this reason, EPA is not delegating part 61, subparts B and I, even though ODEQ and LRAPA requested them.

c. What General Provisions Authorities Are Automatically Granted as Part of Oregon's Title V Operating Permits Program Approval?

Certain General Provisions authorities are automatically granted to ODEQ and

LRAPA as part of Oregon's Title V operating permits program approval. These are 40 CFR 63.6(i)(1), "Extension of Compliance with Emission Standards," and 63.5(e) and (f), "Approval and Disapproval of Construction and Reconstruction."² Additionally, for 40 CFR 63.6(i)(1), ODEQ and LRAPA do not need to have been delegated a particular standard or have issued a Title V operating permit for a particular source to grant that source a compliance extension. However, ODEQ and LRAPA must have authority to implement and enforce the particular standard against the source in order to grant that source a compliance extension.

d. What General Provisions Authorities Is EPA Delegating?

In 40 CFR 63.90 and in a memorandum from John Seitz, Office of Air Quality Planning and Standards, dated July 10, 1998, titled, "Delegation of 40 CFR part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies," EPA clarifies which of the authorities in the General Provisions may and may not be delegated to state and local agencies under 40 CFR part 63, subpart E. Based on these guidelines, EPA is delegating to ODEQ and LRAPA certain part 63, subpart A authorities listed below.

Delegation of these General Provisions authorities will enable ODEQ and LRAPA to carry out the EPA Administrator's responsibilities in these sections of subpart A. In delegating these authorities, EPA grants ODEQ and LRAPA the authority to make decisions which are not likely to be nationally significant or alter the stringency of the underlying standard. The intent is that these agencies will make decisions on a source-by-source basis, not on a source category-wide basis.

TABLE 1.—PART 63, SUBPART A, GENERAL PROVISIONS AUTHORITIES EPA IS DELEGATING

Section	Authorities
63.1	Applicability Determinations.
63.6(e)	Operation and Maintenance Requirements—Responsibility for Determining Compliance.

¹ EPA issued a Notice of Deficiency for Oregon's Title V program on November 30, 1998, (see 63 FR 65783) because of a 1996 court decision that restricted representational standing in Oregon, which EPA believes is a requirement for full Title V approval. Specifically, this kept organizations from challenging state issued Title V permits. Representational standing relates to the ability of an association or organization to act on behalf of their members in judicial proceedings, in this case,

challenging Title V permits. During the 1999 Legislative Session, the Oregon legislature passed House Bill 2180 which clarified that an association or organization has standing to seek judicial review of Title V permits in Oregon. EPA has concluded that these changes address the Notice of Deficiency. This correction is published in another section of today's **Federal Register**.

² Sections 112(i)(1) and (3) state that "Extension of Compliance with Emission Standards" and

"Approval and Disapproval of Construction and Reconstruction" can be implemented by the "Administrator (or a State with a permit program approved under Title V)." EPA interprets that this authority does not require delegation through subpart E and, instead, is automatically granted to States as part of its Title V operating permits program approval provided the State has authority to implement those NESHAP standards in the Title V permit.

TABLE 1.—PART 63, SUBPART A, GENERAL PROVISIONS AUTHORITIES EPA IS DELEGATING—Continued

Section	Authorities
63.6(f)	Compliance with Non-Opacity Standards—Responsibility for Determining Compliance.
63.6(h) [except 63.6(h)(9)]	Compliance with Opacity and Visible Emissions Standards—Responsibility for Determining Compliance.
63.7(c)(2)(i) and (d)	Approval of Site-Specific Test Plans.
63.7(e)(2)(i)	Approval of Minor Alternatives to Test Methods.
63.7(e)(2)(ii) and (f)	Approval of Intermediate Alternatives to Test Methods.
63.7(e)(2)(iii)	Approval of Shorter Sampling Times and Volumes When Necessitated by Process Variables or Other Factors.
63.7(e)(2)(iv) and (h)(2), (3)	Waiver of Performance Testing.
63.8(c)(1) and (e)(1)	Approval of Site-Specific Performance Evaluation (monitoring) Test Plans.
63.8(f)	Approval of Minor Alternatives to Monitoring.
63.8(f)	Approval of Intermediate Alternatives to Monitoring.
63.9 and 63.10 [except 63.10(f)]	Approval of Adjustments to Time Periods for Submitting Reports.

In delegating 40 CFR 63.9 and 63.10, “Approval of Adjustments to Time Periods for Submitting Reports,” ODEQ and LRAPA have the authority to approve adjustments to the timing of the reports that are due, but do not have the authority to alter the contents of the reports. For Title V sources, semiannual and annual reports are required by part 70 and nothing herein will change that requirement.

e. What General Provisions authorities are not delegated?

In general, EPA does not delegate any authorities that require implementation through rulemaking in the **Federal Register**, or where Federal overview is the only way to ensure national consistency in the application of the standards or requirements of CAA section 112. The types of authorities that EPA retains are: Equivalency determinations; approval of alternative test methods; decisions where federal oversight is needed to ensure national consistency; and any decision that requires rulemaking to implement. The authorities listed in the table below (also mentioned in the footnotes of the parts 61 and 63 delegation tables at the end of this rule) are the specific General Provisions authorities that cannot be delegated to any state or local agency, which EPA therefore retains sole authority to implement.

TABLE 2.—PART 61 AND 63, SUBPART A, GENERAL PROVISIONS AUTHORITIES EPA IS NOT DELEGATING

Section	Authorities
61.04(b)	Waiver of Recordkeeping.
61.12(d)(1)	Approval of Alternative Means of Emission Limitation.
61.13(h)(1)(ii)	Approval of Major Alternatives to Test Methods.

TABLE 2.—PART 61 AND 63, SUBPART A, GENERAL PROVISIONS AUTHORITIES EPA IS NOT DELEGATING—Continued

Section	Authorities
61.14(g)(1)(ii)	Approval of Major Alternatives to Monitoring.
61.16	Availability of Information.
61.53(c)(4)	List of Approved Design, Maintenance, and House-keeping Practices for Mercury Chlor-alki Plants.
63.6(g)	Approval fo Alternative Non-Opacity Emission Standards.
63.6(h)(9)	Approval of Alternative Opacity Standard.
63.7(e)(2)(ii) and (f)	Approval of Major Alternative to Test Methods.
63.8(f)	Approval of Major Alternatives to Monitoring.
63.10(f)	Waiver of Recordkeeping—all.

III. Implications

a. How Will This Delegation Affect the Regulated Community?

Once a state or local agency has been delegated the authority to implement and enforce a NESHAP, they become the primary point of contact with respect to that NESHAP. As a result of today’s action, sources in Oregon subject to a delegated NESHAP should direct questions and compliance issues to their respective air agency.

For authorities that are NOT delegated—those noted in Table 2 or any section of 40 CFR parts 61 and 63 that says authority cannot be delegated—affected sources should continue to work with EPA as their primary contact and submit materials directly to EPA for Administrator decision. In these cases, ODEQ or LRAPA should be copied on all submittals, questions, and requests.

EPA continues to have primary responsibility to implement and enforce Federal regulations that do not have current state or local agency delegations. Several part 61 and 63 subparts are excluded from this delegation. Therefore, EPA is the only agency that can implement and enforce NESHAPs as they apply to Oregon’s sources.

Also, EPA is delegating specific federal standards in effect on July 1, 2001. EPA has authority for any NESHAP that changes substantially after this date until these agencies update their delegation.

b. Where Will the Regulated Community Send Notifications and Reports?

Sources subject to delegated NESHAPs (specified in the part 61 and part 63 tables at the end of the rule) will now send required notifications and reports to ODEQ and LRAPA for their action, and send copies to EPA. For authorities that are not delegated, sources should send EPA required notifications, reports, and requests, and send copies to ODEQ or LRAPA. Generally speaking, the transfer of authority from EPA to ODEQ and LRAPA in this delegation changes EPA’s role from primary implementor and enforcer to overseer.

c. How Will This Delegation Affect Indian Country?

This delegation to ODEQ and LRAPA to implement and enforce NESHAPs does not extend to sources or activities located in Indian country, as defined in 18 U.S.C. 1151. “Indian country” is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (2) all dependent Indian communities within the borders of the United States,

whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe, even if the trust lands have not been formally designated as a reservation. Consistent with previous federal program approvals or delegations, EPA will continue to implement the NESHAPs in Indian country, because these agencies have not adequately demonstrated its authority over sources and activities located within the exterior boundaries of Indian reservations and other areas in Indian country.

d. What Will ODEQ and LRAPA's Reporting Requirements to EPA Be?

In delegating the authority to implement and enforce these rules, EPA requires that ODEQ and LRAPA submit the following to EPA:

(1) ODEQ and LRAPA must input all minimum data reportable (MDR) requirements into the AIRS Facility Subsystem (AFS) of the Aerometric Information Retrieval System (AIRS) for stationary sources;

(2) ODEQ and LRAPA must also provide any additional compliance related information to EPA as agreed upon in the Compliance Assurance Agreement between EPA and ODEQ and LRAPA;

(3) ODEQ and LRAPA must submit to EPA copies of determinations issued pursuant to delegated General Provisions authorities, listed in Table 1, above;

(4) ODEQ and LRAPA must also forward to EPA copies of any notifications received pursuant to 40 CFR 63.6(h)(7)(ii) pertaining to the use of a continuous opacity monitoring system; and

(5) ODEQ and LRAPA must submit to EPA's Emission Measurement Center, of the Emissions Monitoring and Analysis Division, copies of any approved intermediate changes to test methods or monitoring. (For definitions of major, intermediate, and minor alternative test methods or monitoring methods, see 40 CFR 63.90 and the July 10, 1998, memorandum from John Seitz, referenced above). These intermediate test methods, or monitoring changes, should be sent via mail or facsimile to: Chief, Source Categorization Group A, U.S. EPA (MD-19), Research Triangle Park, NC 27711, Facsimile telephone number: (919) 541-1039.

e. How Will ODEQ and LRAPA Receive Delegation of Future and Revised Standards?

ODEQ and LRAPA will receive delegation of future standards by the following streamlined process: (1) ODEQ and/or LRAPA will send a letter to EPA requesting delegation for future NESHAP standards adopted by reference into Oregon regulations; (2) EPA will send a letter of response back to ODEQ and/or LRAPA granting this delegation request (or explaining why EPA cannot grant the request); (3) ODEQ and/or LRAPA do not need to send a response back to EPA; (4) If EPA does not receive a negative response from ODEQ and/or LRAPA within 10 days of EPA's letter, then the delegation will be final 10 days after the date of the letter from EPA; and (5) Periodically, EPA will publish a notice in the **Federal Register** informing the public of the updated delegation.

f. How Frequently Should ODEQ and LRAPA Update Their Delegations?

ODEQ and LRAPA are not obligated to receive future delegations. However, they are encouraged to revise their rules to incorporate newer 40 CFR parts 61 and 63 standards and request updated delegation annually. Preferably, ODEQ and LRAPA should adopt federal regulations effective July 1, of each year; this corresponds with the publication date of the CFR.

IV. Summary

EPA approves ODEQ and LRAPA's request for program approval and delegation of authority to implement and enforce specific NESHAPs. Pursuant to the authority of section 112(l) of the Act, this approval is based on EPA's finding that state law, regulations, and agency resources meet the requirements for program approval and delegation of authority specified in 40 CFR 63.91 and applicable EPA guidance.

The purpose of this delegation is to acknowledge ODEQ and LRAPA's ability to implement a NESHAP program and to transfer primary implementation and enforcement responsibility from EPA to ODEQ and LRAPA. Although EPA will look to these agencies as the lead for implementing delegated NESHAPs for their sources, EPA retains authority under section 113 of the Act to enforce any applicable emission standard or requirement, if needed. With program approval, ODEQ and LRAPA may request newly promulgated or updated standards by way of a streamlined process.

Sources subject to delegated NESHAPs (specified in the part 61 and part 63 tables at the end of the rule) will now send required notifications and reports to ODEQ and LRAPA for their action, and send a copy to EPA. Sources should continue to send notifications, reports, requests, etc. pursuant to Authorities not delegated to these agencies to EPA for our action, and send a copy to ODEQ or LRAPA.

EPA is publishing this rule without prior proposal because the Agency views this as a non-controversial 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 grant full delegation of NESHAP standards to ODEQ and LRAPA should adverse comments be filed. This rule will be effective August 9, 2002, without further notice unless the Agency receives adverse comments by July 10, 2002.

If the EPA receives such comments, then EPA will publish a notice 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. EPA will not institute a second comment period. Parties interested in commenting should do so at this time.

If no comments are received, the public is advised that this rule will be effective on August 9, 2002, and no further action will be taken on the proposed rule.

V. Administrative Requirements

Under Executive Order 12866, "Regulatory Planning and Review" (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. Delegation of authority to implement and enforce unchanged federal standards under section 112(l) of the CAA does not create any new requirements but simply transfers primary implementation authorities to the state (or local) agency. 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.*). This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) because it approves pre-existing requirements under State law and does not impose any additional

enforceable duties beyond that required by State law.

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, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because 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, "Federalism" (64 FR 43255, August 10, 1999). The action merely approves a State and local program and rules implementing a Federal standard and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. Although section 6 of the Executive Order does not apply to this rule, EPA did consult with representatives of state government in developing this rule, and this rule is in response to the State's delegation request. This action, also, is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) or 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 significantly regulatory action under Executive Order 12866. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 9, 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 CAA section 307(b)(2).

List of Subjects

40 CFR Part 61

Environmental protection, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Reporting and recordkeeping requirements, Vinyl chloride.

40 CFR Part 63

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

Dated: May 24, 2002.

Ronald A. Kreizenbeck,
Acting Regional Administrator, Region 10.

Title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 61—[AMENDED]

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

Authority: 42 U.S.C. 7401, 7412, 7413, 7414, 7416, 7601 and 7602.

Subpart A—General Provisions

2. Section 61.04 is amended by revising the table in paragraph (c)(10) to read as follows:

§ 61.04 Address.

* * * * *
(c) * * *
(10) * * *

DELEGATION STATUS FOR PART 61 STANDARDS—REGION 10¹

Subpart ²	AK		Oregon				Washington					
	ADEC ³	IDEQ ⁴	ODEQ ⁵	LRAPA ⁶	Ecology ⁷	BCAA ⁸	NWAPA ⁹	OAPCA ¹⁰	PSCAA ¹¹	SCAPCA ¹²	SWAPCA ¹³	YRCAA ¹⁴
A General Provisions ¹⁵	X	X ⁴	X	X	X	X	X	X	X	X	X	X
B Radon from Underground Uranium Mines												
C Beryllium		X ⁴	X	X	X	X	X	X	X	X	X	X
D Beryllium Rocket Motor Firing		X ⁴	X	X	X	X	X	X	X	X	X	X
E Mercury	X	X ⁴	X	X	X	X	X	X	X	X	X	X
F Vinyl Chloride		X ⁴	X	X	X	X	X	X	X	X	X	X
H Emissions of Radionuclides other than Radon from Dept of Energy facilities												
I Radionuclides from Federal Facilities other than Nuclear Regulatory Commission Licensees and not covered by Subpart H												
J Equipment Leaks of Benzene	X	X ⁴	X	X	X	X	X	X	X	X	X	X
K Radionuclides from Elemental Phosphorus Plants												
L Benzene from Coke Recovery		X ⁴	X	X	X	X	X	X	X	X	X	X
M Asbestos	X ³	X ⁴			X ⁷	X ⁸	X	X ¹⁰	X	X	X	X
N Arsenic from Glass Plants		X ⁴	X	X	X	X	X	X	X	X	X	X
O Arsenic from Primary Copper Smelters		X ⁴	X	X	X	X	X	X	X	X	X	X
P Arsenic from Arsenic Production Facilities		X ⁴	X	X	X	X	X	X	X	X	X	X
Q Radon from Dept of Energy facilities												
R Radon from Phosphogypsum Stacks												
T Radon from Disposal of Uranium Mill Tailings		X ⁴										
V Equipment Leaks	X	X ⁴	X	X	X	X	X	X	X	X	X	X
W Radon from Operating Mill Tailings												
Y Benzene from Benzene Storage Vessels	X	X ⁴	X	X	X	X	X	X	X	X	X	X
BB Benzene from Benzene Transfer Operations		X ⁴	X	X	X	X	X	X	X	X	X	X
FF Benzene Waste Operations	X		X	X	X	X	X	X	X	X	X	X

¹ Table last updated on August 9, 2002.

² Any authority within any subpart of this part (i.e. under "Delegation of Authority") that is identified as not delegatable, is not delegated.

³ Alaska Department of Environmental Conservation (01/18/1997) Note: Alaska received delegation for §61.145 and §61.154 of subpart M (Asbestos), along with other sections and appendices which are referenced in §61.145, as §61.145 applies to sources required to obtain an operating permit under Alaska's regulations. Alaska has not received delegation for subpart M for sources not required to obtain an operating permit under Alaska's regulations.
⁴ Idaho Department of Environmental Quality (07/01/2000) Note: Delegation of these part 61, Subparts applies only to those sources in Idaho required to obtain an operating permit under Title V of the Clean Air Act.
⁵ Oregon Department of Environmental Quality (07/01/2001)
⁶ Lane Regional Air Pollution Authority (07/01/2001)
⁷ Washington Department of Ecology (02/20/2001) Note: Delegation of part 63, subpart M applies only to sources required to obtain an operating permit under Title V of the Clean Air Act, including Hanford. (Pursuant to RCW 70.105.240, only Ecology can enforce regulations at Hanford)
⁸ Benton Clean Air Authority (02/20/2001) Note: Delegation of part 63, subpart M excludes Hanford, see note #6.
⁹ Northwest Air Pollution Authority (07/01/2000)
¹⁰ Olympic Air Pollution Control Authority (07/01/2000) Note: Delegation of part 63, subpart M applies only to sources required to obtain an operating permit under Title V of the Clean Air Act
¹¹ Puget Sound Clean Air Agency (07/01/1999)
¹² Spokane County Air Pollution Control Authority (02/20/2001)
¹³ Southwest Air Pollution Control Authority (08/01/1998)
¹⁴ Yakima Regional Clean Air Authority (07/01/2000)
¹⁵ General Provisions Authorities which are not delegated include: §§61.04(b); 61.12(d)(1); 61.13(h)(1)(ii) for approval of major alternatives to test methods; §61.14(g)(1)(ii) for approval of major alternatives to monitoring; §61.16; §61.53(c)(4); and any sections in the subparts pertaining to approval of alternative standards (i.e., alternative means of emission limitations), or approval of major alternatives to test methods or monitoring. For definitions of *minor*, *intermediate*, and *major* alternatives to test methods and monitoring, see 40 CFR 63.90.

PART 63—[AMENDED]

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

Authority: 42 U.S.C. 7401, 7412, 7413, 7414, 7416, 7601 and 7602.

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

2. Section 63.99 is amended by adding paragraph (a)(37) to read as follows:

§ 63.99 Delegated federal authorities.

* * * * *

(a) * * *

(37) Oregon.

(i) The following table lists the delegation status of specific part 63 subparts that have been delegated to state and local air pollution control agencies in Oregon. An "X" indicates the subpart has been delegated, subject to all the conditions and limitations set forth in federal law, regulations, policy, guidance, and determinations. Some

authorities cannot be delegated and are retained by EPA. These include certain General Provisions authorities and specific parts of some standards. The dates noted at the end of this table indicate the effective dates of federal rules that have been delegated. Any amendments made to these rules after this effective date are not delegated.

DELEGATION STATUS OF PART 63 NESHAPS—STATE OF OREGON¹

Subpart ²	ODEQ ³	LRAPA ⁴
A General Provisions ⁵	X	X
D Early Reductions	-----	-----
F HON-SOCMI	X	X
G HON-Process Vents	X	X
H HON-Equipment Leaks	X	X
I HON-Negotiated Leaks	X	X
L Coke Oven Batteries	X	X
M Perchloroethylene Dry Cleaning	X	X
N Chromium Electroplating	X	X
O Ethylene Oxide Sterilizers	X	X
Q Industrial Process Cooling Towers	X	X
R Gasoline Distribution	X	X
S Pulp and Paper	X	X
T Halogenated Solvent Cleaning	X	X
U Polymers and Resins I	X	X
W Polymers and Resins II-Epoxy	X	X
X Secondary Lead Smelting	X	X
Y Marine Tank Vessel Loading	X	X
AA Phosphoric Acid Manufacturing Plants	X	X
BB Phosphate Fertilizers Production Plants	X	X
CC Petroleum Refineries	X	X
DD Off-Site Waste and Recovery	X	X
EE Magnetic Tape Manufacturing	X	X
GG Aerospace Manufacturing & Rework	X	X
HH Oil and Natural Gas Production Facilities	X	X
II Shipbuilding and Ship Repair	X	X
JJ Wood Furniture Manufacturing Operations	X	X
KK Printing and Publishing Industry	X	X
LL Primary Aluminum	X	X
MM Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills	X	X
OO Tanks—Level 1	X	X
PP Containers	X	X
QQ Surface Impoundments	X	X
RR Individual Drain Systems	X	X
SS Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or Process	X	X
TT Equipment Leaks—Control Level 1	X	X
UU Equipment Leaks—Control Level 2	X	X
VV Oil-Water Separators and Organic-Water Separators	X	X
WW Storage Vessels (Tanks)—Control Level 2	X	X
YY Source Categories: Generic MACT	X	X
CCC Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants	X	X
DDD Mineral Wool Production	X	X

DELEGATION STATUS OF PART 63 NESHAPS—STATE OF OREGON¹—Continued

Subpart ²	ODEQ ³	LRAPA ⁴
EEE Hazardous Waste Combustors	X	X
GGG Pharmaceuticals Production	X	X
HHH Natural Gas Transmission and Storage Facilities	X	X
III Flexible Polyurethane Foam Production	X	X
JJJ Polymers and Resins IV	X	X
LLL Portland Cement Manufacturing	X	X
MMM Pesticide Active Ingredient Production	X	X
NNN Wool Fiberglass Manufacturing	X	X
OOO Manufacture of Amino Phenolic Resins	X	X
PPP Polyether Polyols Production	X	X
RRR Secondary Aluminum Production	X	X
TTT Primary Lead Smelting	X	X
VVV Publicly Owned Treatment Works	X	X
XXX Ferroalloys Production: Ferromanganese & Silico manganese	X	X
CCCC Manufacture of Nutritional Yeast	X	X
GGGG Extraction of Vegetable Oil	X	X

¹ Table last updated on August 9, 2002; see 40 CFR 61.04(b)(WW) for agency addresses.

² Any authority within any subpart of this part (i.e. under "Delegation of Authority") that is identified as not delegatable, is not delegated.

³ Oregon Department of Environmental Quality (07/01/2001).

⁴ Lane Region Air Pollution Authority (07/01/2001).

⁵ General Provisions Authorities which may not be delegated include: §§ 63.6(g); 63.6(h)(9); 63.7(e)(2)(ii) and (f) for approval of major alternatives to test methods; § 63.9(f) for approval of major alternatives to monitoring. For definitions of minor, intermediate, and major alternatives to test methods and monitoring, see 40 CFR 63.90.

[FR Doc. 02-13974 Filed 6-7-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[ME 067-7016a; FRL-7227-1]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the sections 111(d)/129 negative declaration submitted by the Maine Department of Environmental Protection (DEP) on January 24, 2002. This negative declaration adequately certifies that there are no existing commercial and industrial solid waste incineration units (CISWIs) located within the boundaries of the state of Maine. EPA publishes regulations under sections 111(d) and 129 of the Clean Air Act requiring states to submit control plans to EPA. These state control plans show how states intend to control the emissions of designated pollutants from designated facilities (e.g., CISWIs). The state of Maine submitted this negative declaration in lieu of a state control plan.

DATES: This direct final rule is effective on August 9, 2002, without further notice unless EPA receives significant

adverse comment by July 10, 2002. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

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

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

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

SUPPLEMENTARY INFORMATION:

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- I. What action is EPA taking today?
- II. What is the origin of the requirements?
- III. When did the requirements first become known?
- IV. When did Maine submit its negative declaration?
- V. Administrative Requirements

I. What Action Is EPA Taking Today?

EPA is approving the negative declaration of air emissions from CISWI units submitted by the state of Maine.

EPA is publishing this negative declaration without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section

of this **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve this negative declaration should relevant adverse comments be filed. If EPA receives no significant adverse comment by July 10, 2002, this action will be effective August 9, 2002.

If EPA receives significant adverse comments by the above date, we will withdraw this action before the effective date by publishing a subsequent document in the **Federal Register** that will withdraw this final action. EPA will address all public comments received in a subsequent final rule based on the parallel proposed rule published in today's **Federal Register**. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If EPA receives no comments, this action will be effective August 9, 2002.

II. What Is the Origin of the Requirements?

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

III. When Did the Requirements First Become Known?

On November 30, 1999 (64 FR 67092), EPA proposed emission guidelines for CISWI units. This action enabled EPA to list CISWI units as designated facilities. EPA specified particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins/furans as designated pollutants by proposing emission guidelines for existing CISWI units. These guidelines were published in final form on December 1, 2000 (65 FR 75362).

IV. When Did Maine Submit Its Negative Declaration?

On January 24, 2002, the Maine Department of Environmental Protection (DEP) submitted a letter certifying that there are no existing CISWI units subject to 40 CFR part 60, subpart B. Section 111(d) and 40 CFR 62.06 provide that when no such designated facilities exist within a state's boundaries, the affected state may submit a letter of "negative declaration" instead of a control plan. EPA is publishing this negative declaration at 40 CFR 62.4980

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 (Public Law 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United

States Court of Appeals for the appropriate circuit by August 9, 2002. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 62

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

Dated: May 16, 2002.

Robert W. Varney,

Regional Administrator, EPA New England.

40 CFR Part 62 is amended as follows:

PART 62—[AMENDED]

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

Authority: 42 U.S.C. 7401-7642.

Subpart U—Maine

2. Subpart U is amended by adding a new § 62.4980 and a new undesignated center heading to read as follows:

Air Emissions From Existing Commercial and Industrial Solid Waste Incineration Units

§ 62.4980 Identification of Plan—negative declaration.

On January 24, 2002, the Maine Department of Environmental Protection submitted a letter certifying that there are no existing commercial and industrial solid waste incineration units in the state subject to the emission guidelines under part 60, subpart DDDD of this chapter.

[FR Doc. 02-14487 Filed 6-7-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 70**

[FRL-7223-5]

Clean Air Act Approval of Revisions to Operating Permits Program in Oregon**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: EPA is approving, as a revision to Oregon's title V air operating permits program, a 1999 statute addressing the State's requirements for judicial standing to challenge State-issued title V permits. In a Notice of Deficiency published on November 30, 1998 (63 FR 65783), EPA notified Oregon of EPA's finding that the State's requirements for judicial standing did not meet minimum Federal requirements for program approval. This program revision resolves the deficiency identified in the Notice of Deficiency. EPA is also approving, as a revision to Oregon's title V air operating permits program, changes to Oregon's title V regulations made in 1999 that reorganize and renumber the regulations and increase title V fees.

DATES: This direct final rule will be effective August 9, 2002, unless EPA receives adverse comment by July 10, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Denise Baker, Environmental Protection Specialist, Office of Air Quality, Mailcode OAQ-107, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. Copies of Oregon's submittal, and other supporting information used in developing this action, are available for inspection during normal business hours at the U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Denise Baker, Office of Air Quality, Mailcode, OAQ-107, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553-8087.

SUPPLEMENTARY INFORMATION:**I. Background**

The Clean Air Act (CAA) Amendments of 1990 required all State and local permitting authorities to develop operating permits programs that meet the requirements of 40 CFR part 70. EPA gave full approval to Oregon's title V operating permits program in 1995. See 60 FR 50106 (September 28, 1995).

A. Representational Standing

Among the requirements that States must meet for full approval of a title V operating permits program is a requirement that the State program include procedures for "judicial review in State court of the final permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law." CAA section 502(b)(6). This requirement is echoed in the part 70 regulations. 40 CFR 70.4(b)(3)(x). EPA has interpreted this requirement to mean that a State must provide the same opportunity for judicial review of title V permitting actions as would be available in Federal court under Article III of the U.S. Constitution. See *Commonwealth of Virginia v. Browner*, 80 F.3d 869 (4th Cir., 1996) (holding EPA's interpretation as "both authorized by Congress and reasonable").

Article III generally requires that, to obtain judicial review, a person must suffer an actual or threatened injury. However, an organization that does not suffer actual or threatened injury to itself may obtain judicial review on behalf of its members when: (1) the members would otherwise have standing to sue in their own right; (2) the interests the organization seeks to protect are germane to its purpose; and (3) neither the claim asserted, nor the relief requested, requires the participation of individual members in the lawsuit. In such a case, the organization itself need not show actual or threatened injury. See *Hunt v. Washington Apple Advertising Comm'n*, 432 U.S. 333, 341-345 (1977). This exception to the Article III requirement for actual or threatened injury is known as "representational standing."

At the time EPA gave Oregon full approval to Oregon's operating permits program in 1995, EPA had determined that Oregon's requirements for judicial review met the requirements of title V and part 70 with respect to representational standing. On July 18, 1996, the Oregon Supreme Court issued a decision in *Local 290, Plumbers and Pipefitters v. Oregon Department of*

Environmental Quality, 323 Or. 559, 919 P. 2d 1168 ("Local 290"). Interpreting the language of the Oregon Administrative Procedures Act (APA), the Court held that this statute requires that the person seeking judicial review under that statute must be aggrieved (which, under Oregon law, is roughly synonymous with having suffered actual or threatened injury), and that representational standing is therefore not allowed. The Oregon APA governs judicial review for all State environmental permits, including title V permits. Based on this 1996 judicial decision restricting access to judicial review of title V permits, EPA determined that Oregon's program no longer met the program approval requirements of title V and 40 CFR part 70.

Part 70 provides that EPA may withdraw a part 70 program approval, in whole or in part, whenever the approved program no longer complies with the requirements of part 70 and the permitting authority fails to take corrective action. 40 CFR 70.10(c)(1). This section goes on to list a number of potential bases for program withdrawal, including the case where a court has struck down or limited State authorities to administer the program. 40 CFR 70.10(c)(1)(I)(B). Section 70.10(b) sets forth the procedures for program withdrawal, and requires as a prerequisite to withdrawal that the permitting authority be notified of any finding of deficiency by EPA and that the document be published in the **Federal Register**. If the permitting authority has not taken "significant action to assure adequate administration and enforcement of the program" within 90 days after publication of a notice of deficiency, EPA may withdraw the State program, apply any of the sanctions specified in section 179(b) of the Act, or promulgate, administer, and enforce a Federal title V program. 40 CFR 70.10(b)(2). Section 70.10(b)(3) provides that if a State has not corrected the deficiency within 18 months of the finding of deficiency, EPA will apply the sanctions under section 179(b) of the Act, in accordance with section 179(a) of the Act. Upon EPA action, the sanctions will go into effect unless the State has corrected the deficiencies identified in the notice within 18 months.¹ In addition, section 70.10(b)(4) provides that, if the State has not corrected the deficiency within 18 months after the date of notice of deficiency, EPA must promulgate,

¹ EPA is developing an Order of Sanctions rule to determine which sanction applies at the end of this 18 month period.

administer, and enforce a whole or partial program within 2 years of the date of the finding.

In a Notice of Deficiency published on November 30, 1998 (63 FR 65783), EPA notified Oregon of EPA's finding that the State's requirements for judicial standing did not meet minimum Federal requirements for program approval. In response to the Notice of Deficiency, the Oregon Legislature enacted Oregon Laws 1999, chapter 511 (HB 2180), during the 1999 legislative session. That provision, codified at Oregon Revised Statute (ORS) 468.067, states that an association or organization has standing to seek judicial review of any final order issued in a title V permit proceeding if: (a) one or more members is adversely affected or aggrieved by the order; (b) the interests that the association or organization seeks to protect are germane to the purpose of the group; and (c) the nature of the claim and requested relief do not require that the adversely affected or aggrieved members of the association or organization participate in the judicial review proceedings. Oregon submitted this statute as a revision to its title V program on March 15, 2000, less than 16 months after EPA issued the Notice of Deficiency. The qualifications in the Oregon statute parallel Federal law on representational standing. Therefore, EPA has determined that the statutory change meets the requirements of title V and part 70 and adequately addresses the deficiency identified in the Notice of Deficiency.

B. 1999 Reorganization and Renumbering of Title V Regulations

In its March 15, 2000, submittal, Oregon also transmitted to EPA revisions to Oregon's air quality regulations promulgated in 1999 relating to Oregon's title V program and asked that EPA approve these revisions as a revision to Oregon's title V program. The 1999 revisions to Oregon's regulations reorganize and renumber all of Oregon's air quality regulations in order to increase the efficiency of Oregon's air quality permitting and compliance process. These revisions are nonsubstantive in nature. EPA is therefore proposing to approve these revisions as a revision to Oregon's title V air operating permits program.

C. 1999 Changes to Title V Fee Provisions

Oregon's March 15, 2000, submittal also transmitted to EPA revisions to Oregon's air quality regulations promulgated in 1999 relating to fees for title V sources. The 1999 revisions increase Oregon's title V operating

permit program fees by the Consumer Price Index. In addition, at the time EPA granted Oregon full approval, only major sources were required to obtain title V permits, and Oregon therefore required only major sources to pay title V fees. Since that time, certain non-major sources (landfills) are required to obtain title V permits. Oregon has therefore revised its fee rules to allow Oregon to assess title V fees to all sources required to obtain title V permits. EPA is approving these 1999 revisions to Oregon's rules for assessing title V fees as meeting the requirements of part 70.

D. Oregon Environmental Audit Statute

EPA did not initially take action on Oregon's March 15, 2000, submittal because of EPA's concern that Oregon's Audit Privilege Act, Oregon Revised Statute 468.963 (1993), interfered with Oregon's ability to meet federal requirements for approval of EPA programs, including title V. During the 2001 Legislative Session, Oregon Legislature passed House Bill 3536, which amended ORS 468.963 to ensure that Audit Privilege Law does not apply to criminal investigations or proceedings. These statutory amendments became effective January 1, 2002. With these amendments, the Oregon Audit Privilege law no longer interferes with the State's ability to meet the Federal requirements of title V.

II. Final Action

EPA is approving, as a revision to Oregon's title V air operating permits program, ORS 468.067, a 1999 statute addressing the State's requirements for representational standing to challenge State-issued title V permits in judicial proceedings. EPA has determined that the statutory change made by Oregon in 1999 meets the representational standing requirements of title V and part 70 and adequately addresses the deficiency identified in the Notice of Deficiency published on November 30, 1998 (63 FR 65783). EPA is also approving, as a revision to Oregon's title V air operating permits program, changes to Oregon's title V regulations made in 1999 that reorganize and renumber the regulations and increase title V fees.

Consistent with EPA's action granting Oregon full approval, 60 FR 50107, this approval does not extend to "Indian Country", as defined in 18 U.S.C. 151. See 64 FR 8247, 8250-8251 (February 19, 1999); 59 FR 42552, 42554 (August 18, 1994).

III. Administrative Requirements

Under Executive Order 12866, "Regulatory Planning and Review" (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. 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.*). This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) because it approves pre-existing requirements under State law and does not impose any additional enforceable duties beyond that required by State law.

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, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because 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, "Federalism" (64 FR 43255, August 10, 1999). The action merely approves existing requirements under State law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This action, also, is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) or 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 significantly regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of

the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060-0243. For additional information concerning these requirements, see 40 CFR part 70. 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.

In reviewing State operating permit programs submitted pursuant to title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a State program 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.

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 Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 9, 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 CAA section 307(b)(2).

List of Subjects in 40 CFR Part 70

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

Dated: May 22, 2002.

Elbert Moore,

Acting Regional Administrator, Region 10.

40 CFR part 70, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

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

2. In appendix A to Part 70, the entry for Oregon is amended by revising paragraph (a) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Oregon

(a) Oregon Department of Environmental Quality: submitted on November 15, 1993, as amended on November 15, 1994 and June 30 1995; full approval effective on November 27, 1995; revisions submitted on March 15, 2000; approval of revisions effective on August 9, 2002.

* * * * *

[FR Doc. 02-13972 Filed 6-7-02; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 98-153; FCC 02-48]

Ultra-Wideband Transmission Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On May 16, 2002 (67 FR 34852), the Commission published final rules in the *First Report and Order* which revised the Commission's rules to permit the marketing and operation of certain types of new products incorporating ultra-wideband technology. This document contains corrections to those rules.

DATES: Effective July 15, 2002.

FOR FURTHER INFORMATION CONTACT: John A. Reed, Office of Engineering and Technology, (202) 418-2455.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document revising part 15

in the **Federal Register** of May 16, 2002 (67 FR 34852). This document corrects the **Federal Register** as it appeared. In rule FR Doc. 02-11929 published on May 16, 2002 (67 FR 34852). The Commission is correcting a typographical error in § 15.517 resulting in the incorrect designation of paragraphs (e) through (g) and an incorrect reference in paragraph (e). We also correct a typographical error in the table in § 15.519(c) of the rules.

In rule FR Doc. No. 02-11929 published on May 16, 2002 (65 FR 34852) make the following corrections:

1. On page 34858 in the third column, and on page 34859 in the first column, in § 15.517, paragraphs (e), (f), and (g) are correctly designated as paragraphs (d), (e), and (f) and the reference in newly designated paragraph (d) introductory text is corrected to read as "paragraph (c)."

2. On page 34859 in the second column, in § 15.519 correct the table in paragraph (c) to read as follows:

§ 15.519 [Corrected]

* * * * *

(c) * * *

Frequency in MHz	EIRP in dBm
960-1610	-75.3
1610-1990	-63.3
1990-3100	-61.3
3100-10600	-41.3
Above 10600	-61.3

* * * * *

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02-14435 Filed 6-7-02; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020402077-2077-01; I.D. 052802F]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Whiting Closure for the Mothership Sector

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

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces closure of the 2002 mothership fishery for Pacific

whiting (whiting) at 0500 local time (l.t.) June 6, 2002, because the allocation for the mothership sector is projected to be reached by that time. This action is intended to keep the harvest of whiting at the 2002 allocation levels.

DATES: Effective from 0500 l.t. June 6, 2002, until the start of the 2003 primary season for the mothership sector, unless modified, superseded or rescinded; such action will be published in the **Federal Register**. Comments will be accepted through June 25, 2002.

ADDRESSES: Submit comments to D. Robert Lohn, Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070; or Rodney McInnis, Acting Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT: Becky Renko or Carrie Nordeen at 206-526-6140.

SUPPLEMENTARY INFORMATION: This action is authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. On April 15, 2002 (67 FR 18117), the levels of allowable biological catch (ABC), the optimum yield (OY) and the commercial OY (the OY minus the tribal allocation) for U.S. harvests of whiting were announced in the **Federal Register**. For 2002 the whiting OY is 129,600 metric tons (mt)

and the commercial OY is 106,920 mt. Regulations at 50 CFR 660.323(a)(4) divide the commercial OY into separate allocations for the catcher/processor, mothership, and shore-based sectors of the whiting fishery. The 2002 allocations, which are based on the 2002 commercial OY, are 36,353 mt (34 percent) for the catcher/processor sector, 25,661 mt (24 percent) for the mothership sector, and 44,906 mt (42 percent) for the shoreside sector. When each sector's allocation is reached, the primary season for that sector is ended. The mothership sector is composed of motherships, and catcher vessels that harvest whiting for delivery to motherships. Motherships are vessels that process, but do not harvest, whiting. The regulations at 50 CFR 660.323 (a)(3)(i) describe the primary season for vessels delivering to motherships as the period(s) when at-sea processing is allowed and the fishery is open for the mothership sector.

NMFS Action

This action announces achievement of the allocation for the mothership sector only. The best available information on June 4, 2002, indicated that the 25,661 mt mothership allocation would be reached by 0500 hours, June 6, 2002, at which time the primary season for the mothership sector ends and further at-sea processing and receipt of whiting by a mothership, or taking and retaining, possessing, or landing of whiting by a catcher boat in the mothership sector,

are prohibited. For the reasons stated above, and in accordance with the regulations at 50 CFR 660.323(a)(4)(iii)(B), NMFS herein announces that effective 0500 hours June 6, 2002—(1) further receiving or at-sea processing of whiting by a mothership is prohibited. No additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a mothership may continue to process whiting that was on board before at-sea processing was prohibited, and (2) whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the mothership sector.

Classification

This action is authorized by the regulations implementing the FMP. The determination to take this action is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the office of the Regional Administrator (see **ADDRESSES**) during business hours. This action is taken under the authority of 50 CFR 660.323(a)(4)(iii)(B) and is exempt from review under Executive Order 12866.

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

Dated: June 5, 2002.

John H. Dunnigan,

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

[FR Doc. 02-14539 Filed 6-5-02; 3:59 pm]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 67, No. 111

Monday, June 10, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket No. FV00-927-3]

Winter Pears Grown in Oregon and Washington; Secretary's Decision and Referendum Order on Proposed Amendment of Marketing Agreement and Order No. 927

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes amendments to the marketing agreement and order for winter pears grown in Oregon and Washington (order), and provides growers with the opportunity to vote in a referendum to determine if they favor the changes. The amendments are based on those proposed by the Winter Pear Control Committee (Committee), which is responsible for local administration of the order. The amendments include: authorizing the Committee to recommend maturity regulations; authorizing the Committee to recommend container or marking requirements; and changing provisions related to alternate Committee members serving for absent members at Committee meetings. The proposed amendments are intended to improve the operation and functioning of the winter pear marketing order program.

DATES: The referendum will be conducted from July 17 to August 2, 2002. The representative period for the purpose of the referendum is July 1, 2001, through June 30, 2002.

FOR FURTHER INFORMATION CONTACT: Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, Stop 0237, room 2522-S, Washington, DC 20250-0237; telephone: (202) 720-2491, or Fax: (202) 720-8938. Small businesses may request

information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, Stop 0237, room 2525-S, Washington, D.C. 20250-0237; telephone (202) 720-2491; Fax (202) 720-8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding; Notice of Hearing issued on November 2, 2000, and published in the November 8, 2000, issue of the **Federal Register** (65 FR 66935); Recommended Decision and Opportunity to File Written Exceptions issued on March 27, 2002, and published in the April 3, 2002, issue of the **Federal Register** (67 FR 15747).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

The proposed amendments were formulated based on the record of a public hearing held in Portland, Oregon, on November 29, 2000. Notice of this hearing was published in the **Federal Register** on November 8, 2000. The hearing was held to consider the proposed amendment of Marketing Agreement and Order No. 927, regulating the handling of winter pears grown in Oregon and Washington, hereinafter referred to collectively as the "order." The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900). The notice of hearing contained several proposals submitted by the Committee, and one proposed by the Agricultural Marketing Service (AMS).

The Committee's proposed amendments included: authorizing the Committee to recommend maturity regulations; authorizing the Committee to recommend container and marking requirements; and changing provisions related to alternate Committee members serving for absent members at Committee meetings.

The Fruit and Vegetable Programs of AMS proposed to allow such changes as may be necessary to the order, if any of the proposed changes are adopted, so that all of the order's provisions conform with the effectuated amendments.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on March 27, 2002, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by May 3, 2002. No exceptions were filed.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and amendments thereto are unique in that they are normally brought about through group action of essentially small entities acting on their own behalf. Thus, both the RFA and the Act are compatible with respect to small entities.

According to the Small Business Administration (13 CFR 121.201), small handlers are those having annual receipts of less than \$5,000,000 and small agricultural producers are defined as those with annual receipts of less than \$750,000. Based on testimony presented at the hearing, a majority of the winter pear producers are considered small under the SBA definition. Of the 1,800 winter pear growers, 80 to 85 percent are estimated to have sales equal to or less than \$750,000. There are 90 handlers operating in the production area. The majority of these handlers fit the SBA definition of a small handler. Thus, this action will apply primarily to small entities.

This decision proposes making the following amendments to the winter pear marketing order: (1) To amend § 927.51(a)(1) of the order to specifically authorize the establishment of maturity regulations; (2) To amend § 927.51 of the order to authorize the establishment of container requirements which would

encompass capacity, weight, dimensions, and packing of the container, or containers, which may be used in packaging or handling of pears; and (3) To amend § 927.28 of the order to authorize additional alternates to serve for a Committee member in the event that both that member and that member's alternates are unable to attend a Committee meeting.

These actions are designed to enhance the quality of winter pears at consumer outlets through the regulation of maturity regulations, to create more orderly marketing conditions for winter pears through the implementation of container uniformity, to improve grower returns through these combined actions, and to ensure grower and handler representation at all Committee meetings.

Members of the Winter Pear Control Committee attending the hearing testified that the proposal to grant authority to establish maturity regulations has been widely discussed within the grower community, an estimated 80 to 85 percent of which qualify as small producers. Moreover, among the witnesses testifying, it was often stated that implementing maturity requirements would equally benefit small and large producers by standardizing industry requirements and enhancing overall product quality in the market.

Small handlers from both Oregon and Washington were present and participated in the hearing, and indicated their support for this proposal. When asked if such regulations would increase handler costs, one small handler responded that while some additional inspection costs would be incurred, those costs are expected to be offset with the increase in consumption. Ultimately, witnesses testifying at the hearing indicated that net returns to both handlers and producers would increase.

Testimony also indicated that the proposal to grant authority to fix the size, capacity, weight, dimensions, markings, or pack of the container, or containers, used in the packaging or handling of winter pears has been widely discussed within the winter pear industry. The proposed changes also include definitions of "pack" and "container" that are added based upon testimony at the hearing. Among the witnesses testifying, it was widely stated that implementing this authority would equally benefit both small and large handlers and growers. By standardizing container and packing requirements, handling costs would decrease through reduced inventories and more efficient packing procedures.

Uniformity in the market would also facilitate standardized transactions by ensuring more equitable cost per unit comparisons and producer returns on product.

Small handlers testifying at the hearing indicated their support for this proposal. When asked if such regulations would increase handler costs, one small handler explained that the costs of new containers are likely to be offset by gains in packing efficiency and a more transparent cost per unit comparisons in handler to retailer transactions. Small producers testifying to this issue realized that increased costs in packing material would more than likely be passed from the handler to the grower, but the net gain from container standardization will ultimately benefit the industry as a whole, including the small producer. It was stated that by removing confusion related to container size in the marketplace, growers should get a fairer return on their product.

In the case of districts having only two Committee members, a temporary alternate will be selected by the absent Committee member from the collective pool of alternates from all districts and will represent the same group (grower or handler). The amendment proposed in this decision represents a modification to the Committee's proposal in order to better effectuate its terms. This method of selecting a temporary alternate would ensure representation of all growers and handlers (both large and small) at Committee meetings while having little or no increase in Committee administrative costs. Moreover, testimony demonstrated that the authority to temporarily assign alternates would improve representation of the small producers and handlers.

The collection of information under the marketing order would not be affected by these amendments to the marketing order. Current information collection requirements for Part 927 are approved by OMB under OMB number 0581-0089.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. All of these amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

Committee meetings held to discuss these proposals, as well as the hearing, were widely publicized throughout the

Oregon and Washington winter pear production area. All interested persons were invited to attend the meetings and the hearing, and participate in Committee deliberations on all issues. All Committee meetings and the hearing were public forums, and all entities, both large and small, were able to express views on these issues.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Civil Justice Reform

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendments.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Findings and Conclusions

The findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the April 3, 2002, issue of the **Federal Register** are hereby approved and adopted.

Marketing Agreement and Order

Annexed hereto and made a part hereof is the document entitled "Order Amending the Order Regulating the Handling of Winter Pears Grown in Oregon and Washington." This document has been decided upon as the detailed and appropriate means of

effectuating the foregoing findings and conclusions.

It is hereby ordered, That this entire decision be published in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR part 900.400 *et seq.*) to determine whether the annexed order amending the order regulating the handling of winter pears grown in Oregon and Washington is approved or favored by growers, as defined under the terms of the order, who during the representative period were engaged in the production of winter pears in the production area.

The representative period for the conduct of such referendum is hereby determined to be July 1, 2001, through June 30, 2002.

The agent of the Secretary to conduct such referendum is hereby designated to be Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 S.W. Third Avenue, room 369, Portland, Oregon 97204; telephone (503) 326-2724.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

Dated: June 4, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

Order Amending the Order Regulating the Handling of Winter Pears Grown in Oregon and Washington¹

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.*

Pursuant to the provisions of the Agricultural Marketing Agreement Act

of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Agreement and Order No. 927 (7 CFR part 927), regulating the handling of winter pears grown in Oregon and Washington. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of winter pears grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which hearings have been held;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of winter pears cherries grown in the production area; and

(5) All handling of winter pears grown in the production area as defined in the marketing agreement and order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of winter pears grown in Oregon and Washington shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the

Recommended Decision issued by the Administrator on March 27, 2002, and published in the **Federal Register** on April 3, 2002, will be and are the terms and provisions of this order amending the order and are set forth in full herein.

PART 927—WINTER PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Revise § 927.5 to read as follows:

§ 927.5 Size

Size means the number of pears which can be packed in a standard pear box when packed in accordance with the packing requirements of the U.S. Standards for Pears (part 51 of this title), or as such regulations hereafter may be modified or as *Asize* may be more specifically defined in a regulation issued under this part.

3. Add a new § 927.14 to read as follows:

§ 927.14 Pack.

Pack means the specific arrangement, size, weight, count, or grade of a quantity of pears in a particular type and size of container, or any combination thereof.

4. Add a new § 927.15 to read as follows:

§ 927.15 Container.

Container means a box, bag, crate, lug, basket, carton, package, or any other type of receptacle used in the packaging or handling of pears.

5. Revise § 927.28 to read as follows:

§ 927.28 Alternates for members of the Control Committee.

The first alternate for a member shall act in the place and stead of the member for whom he or she is an alternate during such member's absence. In the event of the death, removal, resignation, or disqualification of a member, his or her first alternate shall act as a member until a successor for the member is selected and has qualified. The second alternate for a member shall serve in the place and stead of the member for whom he or she is an alternate whenever both the member and his or her first alternate are unable to serve. In the event that both a member of the Control Committee and that member's alternates are unable to attend a Control Committee meeting, the member may designate any other alternate member from the same group (handler or grower) to serve in that member's place and stead.

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

6. Amend § 927.51 by revising paragraph (a) to read as follows:

§ 927.51 Issuance of regulations and modification, suspension, or termination thereof.

(a) Whenever the Secretary finds, from the recommendations and information submitted by the Control Committee, or from other available information, that regulation, in the manner specified in the section, of the shipment of pears would tend to effectuate the declared policy of the act, he or she shall so limit the shipment of pears during a specified period or periods. Such regulation:

(1) May limit the total quantity of any grade, size, quality, maturity, or combination thereof, of any variety of pears grown in any district and may prescribe different requirements applicable to shipments in different export markets; or

(2) May prescribe minimum standards of quality for any variety of pears and limit the shipment thereof to those meeting such minimum standards; or

(3) Fix the size, capacity, weight, dimensions, markings, or pack of the container, or containers, which may be used in packaging or handling of pears.

* * * * *

[FR Doc. 02-14404 Filed 6-7-02; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV02-930-3 PR]

Tart Cherries Grown in the States of Michigan, et al.; Increased Assessment Rates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from \$0.00175 to \$0.0021 per pound. It also would increase the assessment rate for cherries utilized for juice, juice concentrate, or puree from \$0.000875 to \$0.00105 per pound. Both assessment rates were recommended by the Cherry Industry Administrative Board (Board) under Marketing Order No. 930 for the 2002-2003 and subsequent fiscal periods. The Board is responsible for local administration of the marketing order which regulates the handling of tart

cherries grown in the production area. Authorization to assess tart cherry handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The fiscal period will begin July 1, 2002, and end June 30, 2003. The assessment rates would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by July 10, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, or e-mail:

moabdocket.clerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: <http://www.ams/usda.gov/fv/moab.html>.

FOR FURTHER INFORMATION CONTACT:

Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, MD 20737, telephone: (301) 734-5243, or Fax: (301) 734-5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, or Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, tart cherry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rates as issued herein would be applicable to all assessable tart cherries beginning July 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Board for the 2002-2003 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from \$0.00175 to \$0.0021 per pound of cherries. The assessment rate for cherries utilized for juice, juice concentrate, or puree would be increased from \$0.000875 to \$0.00105 per pound.

The tart cherry marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of tart cherries. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rates. The assessment rates are formulated and discussed in a public meeting. Thus, all directly affected

persons have an opportunity to participate and provide input.

For the 2001–2002 fiscal period, the Board recommended, and the Department approved, assessment rates that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the USDA upon recommendation and information submitted by the Board or other information available to USDA.

Section 930.42(a) of the order authorizes a reserve sufficient to cover one year's operating expenses. The increased rates are expected to generate enough income to meet the Board's operating expenses in 2002–2003.

The Board met on January 24, 2002, and unanimously recommended 2002–2003 expenditures of \$522,500. The Board also recommended an assessment rate of \$0.0021 per pound of tart cherries utilized in the production of tart cherry products other than juice, juice concentrate, and puree products and an assessment rate of \$0.00105 per pound for juice, juice concentrate, and puree products. In comparison, last year's budgeted expenditures were \$442,500. The recommended assessment rates of \$0.0021 and \$0.00105 are higher than the current rates of \$0.00175 and \$0.000875, respectively. The Board recommended increased assessment rates to generate larger revenue to meet its expenses and keep its reserves at an acceptable level.

The order provides that when an assessment rate based on the number of pounds of tart cherries handled is established, it should provide for differences in relative market values for various cherry products. The discussion of this provision in the order's promulgation record indicates that proponents testified that cherries utilized in high value products such as frozen, canned, or dried cherries should be assessed one rate while cherries used to make low value products such as juice concentrate or puree should be assessed at one-half that rate.

The major expenditures recommended by the Board for the 2002–2003 fiscal period include \$85,000 for meetings, \$170,000 for compliance, \$185,000 for personnel, \$80,000 for office expenses, and \$2,500 for industry educational efforts. Budgeted expenses for those items in 2001–2002 were \$80,000 for meetings, \$100,000 for compliance, \$185,000 for personnel, \$75,000 for office expenses, and \$2,500 for industry educational efforts, respectively.

In deriving the recommended assessment rates, the Board determined assessable tart cherry production for the fiscal period at 260 million pounds. It

further estimated that about 220 million pounds of the assessable poundage would be utilized in the production of high-valued products, like frozen, canned, or dried cherries, and that about 15 million pounds would be utilized in the production of low-valued products, like juice, juice concentrate, or puree. Potential assessment income from the high valued products would be approximately \$462,000 (220 million pounds × \$0.0021 per pound). The potential income from tart cherries utilized for juice, juice concentrate, or puree would be \$15,750 (15 million pounds × \$0.00105 per pound). No assessment income would be received by the Board on approximately 25 million pounds of the projected production of 260 million pounds of tart cherries. Cherries used for export and other diversion outlets are exempt from assessment obligations. Therefore, total assessment income for 2002–2003 is estimated at \$477,750. This amount plus adequate funds in the reserve and interest income would be adequate to cover budgeted expenses. Funds in the reserve (approximately \$233,000) would be kept within the approximately six months' operating expenses as recommended by the Board consistent with § 930.42(a).

The assessment rates established in this rule would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and other information submitted by the Board or other available information.

Although the assessment rates are effective for an indefinite period, the Board will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rates. The dates and times of Board meetings are available from the Board or the USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Board recommendations and other available information to determine whether modifications of the assessment rates are needed. Further rulemaking would be undertaken as necessary. The Board's 2002–2003 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the USDA.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this initial regulatory flexibility analysis. The Regulatory

Flexibility Act (RFA) allows AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS's Fruit and Vegetable Programs (Programs) no longer opts for such certification, but rather performs regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than \$5,000,000, and small agricultural producers are those whose annual receipts are less than \$750,000. A majority of the tart cherry handlers and producers may be classified as small entities.

The Board unanimously recommended 2002–2003 expenditures of \$522,500 and assessment rate increases from \$0.00175 to \$0.0021 per pound for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree, and from \$0.000875 to \$0.00105 per pound for cherries utilized for juice, juice concentrate, or puree.

This rule would increase the assessment rate established for the Board and collected from handlers for the 2002–2003 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from \$0.00175 to \$0.0021 per pound, and the assessment rate for cherries utilized for juice, juice concentrate, or puree from \$0.000875 to \$0.00105 per pound. The Board unanimously recommended 2002–2003 expenditures of \$522,500. The quantity of assessable tart cherries expected to be

produced during the 2002–2003 crop year is estimated at 260 million pounds. Assessment income, based on this crop, along with interest income and reserves, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Board for the 2002–2003 fiscal period include \$85,000 for meetings, \$170,000 for compliance, \$185,000 for personnel, \$80,000 for office expenses, and \$2,500 for industry educational efforts. Budgeted expenses for those items in 2001–2002 were \$80,000 for meetings, \$100,000 for compliance, \$185,000 for personnel, \$75,000 for office expenses, and \$2,500 for industry educational efforts, respectively.

The Board discussed the alternative of continuing the existing assessment rates, but concluded that would cause the amount in the operating reserve to be reduced to an unacceptable level.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. Data from the National Agricultural Statistics Service (NASS) states that during the period 1995/96 through 1999/00, approximately 91 percent of the U.S. tart cherry crop, or 280.5 million pounds, was processed annually. Of the 280.5 million pounds of tart cherries processed, 62 percent was frozen, 29 percent was canned, and 9 percent was utilized for juice.

Based on NASS data, acreage in the United States devoted to tart cherry production has been trending downward. In the ten-year period, 1987/88 through 1997/98, the tart cherry area decreased from 50,050 acres, to less than 40,000 acres. In 1999/00, approximately 90 percent of domestic tart cherry acreage was located in four States: Michigan, New York, Utah and Wisconsin. Michigan leads the nation in tart cherry acreage with 70 percent of the total. Michigan produces about 75 percent of the U.S. tart cherry crop each year. In 1999/00, tart cherry acreage in Michigan decreased to 28,100 acres from 28,400 acres the previous year.

In deriving the recommended assessment rates, the Board estimated assessable tart cherry production for the fiscal period at 260 million pounds. It further estimated that about 220 million pounds of the assessable poundage would be utilized in the production of high-valued products, like frozen, canned, or dried cherries, and that about 15 million pounds would be utilized in the production of low-valued products, like juice, juice concentrate, or puree. Potential assessment income from the high valued products would be

approximately \$462,000 (220 million pounds X \$0.0021 per pound). The potential income from the tart cherries utilized for juice, juice concentrate, or puree would be \$15,750 (15 million pounds X \$0.00105 per pound). No assessment income would be received by the Board on approximately 25 million pounds of the projected production of 260 million pounds of tart cherries. Cherries used for export and other diversion outlets are exempt from assessment obligations. Therefore, total assessment income for 2002–2003 is estimated at \$477,750. This amount plus adequate funds in the reserve and interest income should be adequate to cover budgeted expenses. Funds in the reserve (approximately \$233,000) will be kept within the approximately six months' operational expenses as recommended by the Board which would be consistent with the order (§ 930.42(a)).

While this action would impose additional costs on handlers, the costs are in the form of assessments which are applied uniformly. Some of the costs may also be passed on to producers. However, these costs are offset by the benefits derived from the operation of the marketing order. The Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the January 24, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action would impose no additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is

deemed appropriate because: (1) The 2002–2003 fiscal period begins on July 1, 2002, and ends on June 30, 2003, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable tart cherries handled during such fiscal period; (2) the Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 930.200 is revised to read as follows:

§ 930.200 Handler assessment rate.

On and after July 1, 2002, the assessment rate imposed on handlers shall be \$0.0021 per pound of cherries handled for tart cherries grown in the production area and utilized in the production of tart cherry products other than juice, juice concentrate, or puree. The assessment rate for juice, juice concentrate, and puree products shall be \$0.00105 per pound.

Dated: June 4, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–14405 Filed 6–7–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 99-NE-44-AD]

RIN 2120-AA64

Airworthiness Directives; Pratt & Whitney Canada PT6A Series Turboprop Engines**AGENCY:** Federal Aviation Administration, DOT.**ACTION:** Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This action revises an earlier proposed airworthiness directive (AD), applicable to Pratt & Whitney Canada PT6A series turboprop engines, that have certain turbine exhaust ducts that were modified by Standard Aero Limited (SAL) of Winnipeg, Canada before September 1, 1997. That proposal would have required initial and repetitive inspections for cracks and, if necessary, replacing the turbine exhaust duct if the cracks exceed allowable limits. That proposal was prompted by reports of cracks along the weld seams of certain turbine exhaust ducts. This action revises the proposed rule by requiring inspections for low-quality welds and cracks, of a larger population of turbine exhaust ducts than those modified by SAL. The actions specified by this proposed AD are intended to prevent failure of the turbine exhaust duct due to cracking that could result in possible separation of the reduction gearbox and propeller from the engine, and possible loss of control of the airplane.

DATES: Comments must be received by August 9, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-NE-44-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov." Comments sent via the Internet must contain the docket number in the subject line. The service information referenced in the proposed rule may be obtained from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G1A1. This information may be examined, by

appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT:

James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7176, fax (781) 238-7199.

SUPPLEMENTARY INFORMATION:**Comments Invited**

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99-NE-44-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-NE-44-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to Pratt & Whitney Canada PT6A series turboprop engines with turbine exhaust ducts part number (P/N) 3012290, P/N 3031988, P/N 3032117, P/N 3035784, P/N 3035786,

P/N 3105890-01, P/N 3112167-01, P/N 3112171-01, and P/N 3111780-01, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on December 8, 1999 (64 FR 68640). That proposal would have required initial and repetitive inspections for cracks of certain turbine exhaust ducts, and, if necessary, replacing the duct if the cracks exceed allowable limits. That proposal was prompted by reports of cracks along the weld seams of certain turbine exhaust ducts that were modified by Standard Aero Limited (SAL) of Winnipeg, Canada, before September 1, 1997. Transport Canada, which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on Pratt & Whitney Canada (P&WC) PT6A series turboprop engines. Transport Canada advised the FAA that certain part numbers of exhaust ducts were modified before September 1, 1997, by Standard Aero Limited (SAL) of Winnipeg, Canada, using an alternate gas tungsten arc welding (GTAW) process instead of the resistance (seam or stitch) weld process that was specified in P&WC service bulletin (SB) 1430. Some of those ducts have experienced cracking that may be attributed to the GTAW process. Transport Canada issued AD CF-98-41 on November 26, 1998, in order to assure the airworthiness of these P&WC PT6A series turboprop engines in Canada. That condition, if not corrected, could result in possible separation of the reduction gearbox and propeller from the engine, and possible loss of control of the airplane.

Since the issuance of that proposal, further investigation by the FAA has determined that a number of additional companies have used the same GTAW process as SAL. As a result, the affected population of turbine exhaust ducts has expanded. Therefore, this proposal is no longer confined to turbine exhaust ducts modified by SAL, and is expanded to include the entire affected duct population. This proposal differs from Transport Canada AD CF 98-41. That AD is confined to SAL modified turbine exhaust ducts only. A total of 116 turbine exhaust ducts have been discovered with cracks along the affected weld seam. Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Manufacturer's Service Information

Pratt & Whitney Canada has issued Service Bulletin (SB) No. PT6A-72-1610, dated January 24, 2002, and SB

No. PT6A-72-12173, dated January 24, 2002, that specify procedures for inspection of turbine exhaust duct weld seams for low-quality welds created during repair, initial and repetitive inspections of affected ducts for cracks, and serviceable turbine exhaust duct criteria.

Bilateral Agreement Information

This engine model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada (TC) has kept the FAA informed of the situation described above. The FAA has examined the findings of TC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Proposed Requirements of this AD

Since an unsafe condition has been identified that is likely to exist or develop on other PT6A series engines of the same type design registered in the United States, this proposal requires:

- At the next shop visit or within 150 hours time-in-service after the effective date of the AD, inspection for low-quality welds created during repair on turbine exhaust ducts near flange "A".
- Initial and repetitive inspections for cracks of affected exhaust ducts.

The actions would be required to be done in accordance with the SB's described previously.

Economic Analysis

There are approximately 22,000 engines of the affected design in the worldwide fleet. The FAA estimates that 7,000 engines would be affected by this proposed AD, that it would take approximately 2 work hours per engine to do one inspection, and that the average labor rate is \$60 per work hour. Based on these figures, the total cost of the proposed AD on U.S. operators for one inspection is estimated to be \$840,000.

Regulatory Analysis

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pratt & Whitney Canada: Docket No. 99-NE-44-AD.

Applicability

This airworthiness directive (AD) is applicable to Pratt & Whitney Canada (P&WC) PT6A series turboprop engines, with turbine exhaust ducts part number (P/N) 3012290, P/N 3031988, P/N 3032117, P/N 3035784, P/N 3035786, P/N 3105890-01, P/N 3112167-01, P/N 3112171-01, and P/N 3111780-01. These engines are installed on, but not limited to, Beechcraft King Air-90 and -100 series, Bombardier DHC-6 series, Empresa Brasileira de Aeronautica, S.A. (Embraer) EMB-110 series, Pilatus PC-6 series, and Piper PA-42 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD.

The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent failure of the turbine exhaust duct due to cracking that could result in possible separation of the reduction gearbox and propeller from the engine, and possible loss of control of the airplane, do the following:

Inspection of Turbine Exhaust Ducts for Low-Quality Welds

(a) If the engine has not yet been overhauled, and if the turbine exhaust duct has not yet been subject to a shop visit for repair, no further action is required.

(b) Otherwise, at the next shop visit or within 150 hours time-in-service (TIS) after the effective date of this AD, whichever occurs first, do the following:

(1) Inspect for low-quality welds created during repair, on the turbine exhaust duct near flange "A", in accordance with paragraphs 3B through 3E of P&WC service bulletin (SB) No. PT6A-72-1610, dated January 24, 2002, for models PT6A-6, -6A, -6B, -20, -20A, -20B, -21, -25, -25A, -25C, -27, -28, -34, -34AG, -34B, -36, -114, -114A, -135, and -135A engines, and SB No. PT6A-72-12173, dated January 24, 2002, for models PT6A-11, -11AG, -15AG, -110, and -112 engines.

(2) If it is determined that the welds meet the acceptable criteria specified in SB No. PT6A-72-1610, dated January 24, 2002, or SB No. PT6A-72-12173, dated January 24, 2002, continue using the duct until the next scheduled overhaul. Inspect duct per the engine overhaul manual before reinstallation.

(3) If it is determined that the welds do not meet the acceptable criteria specified in SB No. PT6A-72-1610, dated January 24, 2002, or SB No. PT6A-72-12173, dated January 24, 2002, replace the duct with a serviceable part, or perform the initial and repetitive inspections in the following paragraphs.

Initial Visual Inspection of Welds That Do Not Meet SB Acceptable Criteria

(c) Use 5X magnification to visually inspect the circumference of the forward area of the exhaust duct from the propeller reduction gearbox mounting flange to 2 inches aft of the flange for any crack indications. Mark and record cracks and return the duct to service, or replace with a serviceable part as follows:

(1) If no cracks are found, the duct may be returned to service; or

(2) If three or less cracks are found, and the total cumulative length of the cracks exceeds 2.0 inches, replace the duct with a serviceable part; or

(3) If any one crack exceeds 1.0 inches in length, replace the duct with a serviceable part; or

(4) If any two cracks are separated by less than six times the length of the longest crack (6L) or 3.0 inches or less, whichever is the

closest separation, replace the duct with a serviceable part; or

(5) If more than three cracks are found, replace the duct with a serviceable part; and

(6) Mark all allowable cracks, on the duct, with suitable metal marking material; and

Note 2: Marking materials that are suitable for use on the the exhaust duct may be found in the P&WC Engine Manual.

(7) Record the length of the crack, location, number of duct hours, and time since overhaul (TSO).

Repetitive Visual Inspection of Welds That Do Not Meet SB Acceptable Criteria

(d) Repeat the inspection specified in paragraph (c) of this AD as follows:

(1) For ducts that did not exhibit any cracking at the last inspection, repeat the inspection within 150 hours TIS since the last inspection. Return the duct to service or replace with a serviceable part as specified in paragraph (c)(1) through paragraph (c)(5) of this AD.

(2) For ducts that exhibited cracking at the last inspection, repeat the inspection within 25 hours TIS since the last inspection. Return the duct to service or replace with a serviceable part as follows:

(i) Inspect for new cracks, and cracks that were recorded as specified in paragraph (c) of this AD. Return the duct to service or replace with a serviceable part as specified in paragraph (c)(1) through paragraph (c)(5) of this AD.

(ii) In addition, if the growth rate of an existing crack exceeds 0.015 inch per hour TIS since the last inspection, replace the duct with a serviceable part.

Optional Terminating Action

(e) Replacing an affected exhaust duct with a serviceable part constitutes terminating action for the repetitive inspection requirements of this AD.

Definition of a Serviceable Exhaust Duct

(f) For the purposes of this AD, a serviceable duct is defined as a duct that meets the acceptability limits of this AD.

Alternative Method of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(h) Special flight permits are not allowed.

Note 4: The subject of this AD is addressed in AD CF-98-41 in order to assure the airworthiness of these P&WC PT6A series turboprop engines in Canada.

Issued in Burlington, Massachusetts, on May 30, 2002.

Mark C. Fulmer,

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

[FR Doc. 02-14251 Filed 6-7-02; 8:45 am]

BILLING CODE 4910-13-P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-46019, File No. S7-20-02]

RIN 3235-AI51

Customer Protection—Reserves and Custody of Securities

AGENCY: Securities and Exchange Commission (“Commission”).

ACTION: Proposed rule.

SUMMARY: The Commission is publishing for comment a proposed rule amendment that would allow for the expansion of the categories of collateral broker-dealers may pledge when borrowing securities from customers. Currently, broker-dealers are required to provide cash, U.S. Treasury bills and notes, and irrevocable bank letters of credit. The amendment would allow them also to pledge such other collateral as the Commission, by order, designates. **DATES:** The comment period will expire on July 25, 2002.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

Comments also may be submitted electronically at the following E-mail address: rulecomments@sec.gov. Comment letters should refer to File No. S7-20-02; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying at the Commission’s Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549-0102. Electronically submitted comment letters will be posted on the Commission’s Internet web site (<http://www.sec.gov>). Personal identifying information, such as names or e-mail addresses, will not be edited from electronic submissions. Submit only information you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, 202/942-0131; Thomas K. McGowan, Assistant Director, 202/942-4886; or Randall W. Roy, Special

Counsel, 202/942-0798, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-1001.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment a proposed amendment to Rule 15c3-3¹ under the Securities Exchange Act of 1934 (“Exchange Act”).

I. Discussion

A. Introduction

The Commission is proposing an amendment to its customer protection rule, Rule 15c3-3, under which broker-dealers may pledge, when borrowing fully paid or excess margin securities from customers, such collateral as the Commission may designate by order. Proceeding by Commission order would allow new categories of collateral to be designated as permissible more expeditiously and, if necessary, with conditions to account for differences among collateral types. The flexibility to impose conditions on the use of certain additional collateral would permit the establishment of safeguards designed to ensure that the objective of Rule 15c3-3(b)(3) “the full collateralization of such loans” is not compromised. In addition, the amendment would allow for a wider range of broker-dealer assets to be deemed permissible collateral, thereby adding liquidity to the securities lending markets and lowering borrowing costs for broker-dealers. For these reasons, we expect that the amendment will promote two fundamental Commission goals: (1) The protection of broker-dealer customers, and (2) the promotion of efficient securities markets.

B. Background

The Commission adopted Rule 15c3-3 in 1972 in response to a congressional directive to create rules regarding, among other things, the acceptance, custody, and use of customer securities.² The rule requires broker-dealers to take steps to protect the securities that customers leave in their custody. These steps include the requirement that broker-dealers promptly obtain and thereafter maintain possession or control of all “fully paid”³ and “excess-margin”⁴ securities

¹ 17 CFR 240.15c3-3.

² Exchange Act Release No. 9856 (Nov. 10, 1972).

³ Subparagraph (a)(3) of Rule 15c3-3 defines “fully paid securities” as securities carried in any type of account for which the customer has made a full payment.

⁴ Subparagraph (a)(5) of Rule 15c3-3 defines “excess margin securities” as securities having a market value in excess of 140% of the amount the customer owes the broker-dealer and which the

carried for the accounts of customers⁵ ("customer securities"). The possession or control requirement is designed to ensure that broker-dealers do not put customers at risk by borrowing their securities to expand or otherwise further the broker-dealer's proprietary activities.⁶

Subparagraph (b)(3) of Rule 15c3-3 sets forth conditions under which broker-dealers may borrow fully paid or excess margin securities from customers for their own use without violating the rule's possession or control requirement. These conditions include the requirement that broker-dealers and their lending customers enter into written agreements that (1) set forth the basis of compensation for the loans as well as the rights and liabilities of the parties in the borrowed securities, (2) require the broker-dealers to provide the lenders with schedules of the securities actually borrowed, (3) require the broker-dealers to provide the lenders with, at least, 100% collateral consisting exclusively of cash, United States Treasury bills and notes, or an irrevocable letter of credit issued by a bank, and (4) contain a prominent notice that the provisions of the Securities Investor Protection Act of 1970⁷ may not protect the lenders with respect to the securities loan transactions.⁸ Moreover, the loaned securities and pledged collateral must be marked to market daily, and additional collateral posted if necessary to maintain the 100% collateralization requirement.⁹ These requirements are designed to ensure that these borrowings remain fully collateralized for the term of the loan.

Generally, broker-dealers borrow securities in order to meet obligations to deliver securities that they do not possess. This situation frequently arises in the normal course of a broker-dealer's business, such as when it sells securities that have been purchased but not received, sells securities it does not own

to open a "short" position, needs to deliver securities against the exercise of a derivatives contract, or needs to cover a failed transaction in a securities settlement system.¹⁰ Broker-dealers also borrow securities as part of the services they provide their customers, and as intermediaries in securities lending transactions. On the other hand, customers generally lend securities to increase the rate of return earned on their portfolios through compensation paid by the broker-dealers for the loan of the securities. Typically, the customers that lend securities are large institutions such as pension funds.

Since the rule was adopted, the securities lending markets have grown substantially, particularly in the last ten years. These markets also have become more global in scope. In addition, market participants now use a broad array of highly complex financial products. These factors make it necessary for U.S. broker-dealers to borrow a wider range and greater volume of domestic and foreign securities in order to accommodate the trading activities of their customers. Market participants believe that increasing the categories of permissible collateral under Rule 15c3-3 would add liquidity to the securities lending markets and help to lower borrowing costs. We preliminarily agree with that assessment. Rather than expressly add new categories of collateral into the rule, we propose amending Rule 15c3-3(b)(3) to permit the use of other collateral designated as permissible through Commission order as necessary or appropriate in the public interest and consistent with the protection of investors after giving consideration to the collateral's liquidity, volatility, market depth and location, and the issuer's creditworthiness.

The relative weight given to these factors will vary on a case-by-case basis. Moreover, orders permitting a type of collateral may impose limitations and conditions on its use to account for the fact that some permitted securities may not be appropriate as collateral in all situations. Such conditions should further the rule's goal of maintaining full collateralization of the customer's loan.

¹⁰ Regulation T promulgated by the Board of Governors of the Federal Reserve System limits the purposes for which broker-dealers can borrow customer securities to making delivery of securities in the case of short sales, failure to receive securities required to be delivered, or other similar situations. The purpose of this limitation is to prevent customers from avoiding the initial margin requirements of Regulation T by structuring securities transactions as loans rather than purchases or sales.

The Commission's aim is to increase liquidity and decrease costs, while maintaining the customer protection objectives of Rule 15c3-3. The Commission believes our proposal should achieve this goal because it would allow the Commission to select collateral that has been shown to be sufficiently liquid, and to tailor its orders to account for liquidity and other differences among the categories of collateral selected. The proposed amendment would require the Commission to consider the quality and liquidity of a particular instrument before designating it as permissible collateral. This would include a consideration of the creditworthiness of the issuer of the instrument, the depth of the instrument's market, the locations where the instrument is traded, and the historical volatility of the instrument's price.

Moreover, adding collateral through orders would provide the Commission with the flexibility to place conditions on the use of less liquid instruments. For example, in this release the Commission is seeking comment on ten categories of collateral the Commission is considering adding by order to the permissible categories of collateral under Rule 15c3-3. Two of these categories consist of instruments that may be pledged only when borrowing instruments with similar risk characteristics. The ability to prescribe such conditions would allow for a wider range of broker-dealer assets to be designated as permissible collateral. In addition, should a designated category of collateral become insufficiently liquid or should the conditions to use the collateral need to be modified, the Commission could issue an order withdrawing its designation, limiting its use as collateral, or altering the conditions to use it as collateral.

The Commission anticipates that, if it were to issue orders designating additional categories of permissible collateral pursuant to the proposed amendment, the Commission would take into account several considerations. The Commission likely would consider whether the risks of customer losses associated with permitting a new category of collateral would be sufficiently small relative to the benefits the additional kinds of collateral are expected to provide to justify permitting the new category of collateral. Those expected benefits would include adding liquidity to the securities lending markets and lowering borrowing costs for broker-dealers. The Commission also expects it would draw on its experience in assessing the liquidity of markets in a variety of contexts including, for

broker-dealer has designated as not constituting margin securities.

⁵ Subparagraph (a)(1) of Rule 15c3-3 defines the term "customer." Generally, a customer is any person from whom or on whose behalf the broker-dealer has received or acquired securities for such person's securities account. The definition does not include general partners, directors, or principals of the broker-dealer, or other broker-dealers to the extent of they have proprietary accounts at the broker-dealer.

⁶ The Commission proposed amendments to Rule 15c3-3 to add certain categories of collateral in 1989. See Exchange Act Release No. 26608 (March 8, 1989), 54 FR 10680 (March 15, 1989). The Commission did not adopt the proposed amendments.

⁷ 15 U.S.C. 78aaa *et seq.*

⁸ Rule 15c3-3(b)(3).

⁹ Rule 15c3-3(b)(3)(iii).

example, the net capital requirements for broker-dealers.

Should the Commission adopt the amendment, the Commission is considering whether to delegate its authority to the Division of Market Regulation to issue exemptive orders designating additional categories of collateral permissible under the rule. The Commission preliminarily believes this delegation would allow for flexibility in the establishment of collateral requirements that are more responsive to changes in the securities lending markets.

II. Proposed Order

If the Commission adopts the amendment, the Commission is considering issuing an order that would permit the following categories of collateral to be permissible under the rule. The Commission seeks comment on these collateral types and the conditions specified, including whether they would be appropriate to meet the rule's goal of ensuring that borrowings of customer securities remain fully collateralized. For example, the Commission seeks comment on whether the one and five percent over-collateralization requirements for cross-currency transactions are appropriate for addressing currency risk.¹¹

1. "Government securities" as defined in Section 3(a)(42)(A) and (B) of the Exchange Act may be pledged when borrowing any securities.

2. "Government securities" as defined in Section 3(a)(42)(C) of the Exchange Act issued or guaranteed as to principal or interest by the following corporations may be pledged when borrowing any securities: (i) The Federal Home Loan Mortgage Corporation, (ii) the Federal National Mortgage Association, (iii) the Student Loan Marketing Association, and (iv) the Financing Corporation.

3. Securities issued by, or guaranteed as to principal and interest by, the following Multilateral Development Banks—the obligations of which are backed by the participating countries, including the U.S.—may be pledged when borrowing any securities: (i) The International Bank for Reconstruction and Development, (ii) the Inter-American Development Bank, (iii) the Asian Development Bank, (iv) the African Development Bank, (v) the European Bank for Reconstruction and Development, and (vi) the International Finance Corporation.

4. Mortgage-backed securities meeting the definition of a "mortgage related security" set forth in Section 3(a)(41) of

the Exchange Act may be pledged when borrowing any securities.

5. Negotiable certificates of deposit and bankers acceptances issued by a "bank" as that term is defined in Section 3(a)(6) of the Exchange Act, and which are payable in the United States and deemed to have a "ready market" as that term is defined in 17 CFR 240.15c3-1 ("Rule 15c3-1"),¹² may be pledged when borrowing any securities.

6. Foreign sovereign debt securities may be pledged when borrowing any securities, *provided* that, (i) at least one nationally recognized statistical rating organization ("NRSRO") has rated in one of its two highest rating categories¹³ either the issue, the issuer or guarantor, or other outstanding unsecured long-term debt securities issued or guaranteed by the issuer or guarantor; and (ii) if the securities pledged are denominated in a different currency than those borrowed,¹⁴ the broker-dealer shall provide collateral in an amount that exceeds the minimum collateralization requirement in paragraph (b)(3) of Rule 15c3-3 (100%) by 1% when the collateral is denominated in the Euro, British pound, Swiss franc, Canadian dollar or Japanese yen, or by 5% when it is denominated in another currency.¹⁵

7. Foreign sovereign debt securities that do not meet the NRSRO rating condition set forth in Item 6 above may be pledged only when borrowing non-equity securities issued by a person organized or incorporated in the same jurisdiction (including other debt securities issued by the foreign

¹² Certificates of deposit and bankers acceptances are deemed to have a "ready market" under Rule 15c3-1 if, among other things, they are issued by a bank as defined in Section 3(a)(6) of the Exchange Act that is (i) subject to supervision by a federal banking authority, and (ii) rated investment grade by at least two nationally recognized statistical rating organizations or, if not so rated, has shareholders' equity of at least \$400 million.

¹³ The NRSROs use different symbols to designate credit ratings. For the purposes of the examples in this release, the ratings symbols used as examples are, in order of highest to lowest: AAA, AA, A, BBB, BB, B, and C.

¹⁴ Equity securities would be deemed to be denominated in the currency of the jurisdiction in which the issuer of such securities has its principal place of business.

¹⁵ For example, a broker-dealer that needed to borrow equity or debt securities of a U.S. company could pledge debt securities issued by a foreign sovereign, provided the country is rated "AAA" or "AA." Moreover, because the borrowed and pledged securities would be denominated in different currencies, the broker-dealer would have to provide excess collateral. Thus, if the borrowed securities were worth \$100,000, the broker-dealer would have to pledge enough collateral to equal \$101,000 (1% of the value of the borrowed securities for collateral denominated in the Euro, British pound, Swiss franc, Canadian dollar or Japanese yen) or \$105,000 (5% of the value for collateral denominated in another currency).

sovereign); *provided* that, if such foreign sovereign debt securities have been assigned a rating lower than the securities borrowed, such foreign sovereign debt securities must be rated in one of the four highest rating categories by at least one NRSRO. If the securities pledged are denominated in a different currency than those borrowed, the broker-dealer shall provide collateral in an amount that exceeds the minimum collateralization requirement in paragraph (b)(3) of Rule 15c3-3 by 1% when the collateral is denominated in the Euro, British pound, Swiss franc, Canadian dollar or Japanese yen, or by 5% when it is denominated in another currency.¹⁶

8. The Euro, British pound, Swiss franc, Canadian dollar or Japanese yen may be pledged when borrowing any securities, *provided* that, when the securities borrowed are denominated in a different currency than that pledged, the broker-dealer shall provide collateral in an amount that exceeds the minimum collateralization requirement in paragraph (b)(3) of Rule 15c3-3 by 1%.

9. Foreign currency other than the Euro, British pound, Swiss franc, Canadian dollar or Japanese yen may be pledged only when borrowing non-equity securities denominated in the same currency.

10. Non-governmental debt securities may be pledged when borrowing any securities, *provided* that, in the relevant cash market they are not traded flat or in default as to principal or interest, and are rated in one of the two highest rating categories by at least one NRSRO. If such securities are not denominated in U.S. dollars or in the currency of the securities being borrowed, the broker-dealer shall provide collateral in an amount that exceeds the minimum collateralization requirement in paragraph (b)(3) of Rule 15c3-3 by 1% when the securities pledged are denominated in the Euro, British pound, Swiss franc, Canadian dollar or Japanese

¹⁶ For example, if a broker-dealer needed to borrow equity securities of a U.S. company, it would not be permitted to pledge debt securities issued by a foreign sovereign rated "A" or lower. First, lower-rated sovereign debt can only be pledged when borrowing non-equity securities. Second, it only can be used when borrowing securities issued by a person from the same jurisdiction. However, the broker-dealer could pledge the sovereign debt of a country rated "A" or lower if it was borrowing debt securities of a company incorporated in that country, provided the country is rated "A" or "BBB" or the rating of the company is equal to or less than that of the country. Thus, below investment grade sovereign debt only can be pledged when borrowing securities with an equal or lower rating.

¹¹ The over-collateralization requirements are described below in items 6, 7, 8 and 10.

yen, or by 5% when they are denominated in any other currency.¹⁷

The categories of potential permissible collateral identified above do not include securities that (i) have no principal component, or (ii) accrue interest at the time of the pledge at a stated rate equal to or greater than 100% per annum (expressed as a percentage of the actual principal amount of the security).

In issuing an order, the Commission may require broker-dealers pledging new types of collateral to include in the written agreements with the customers a notice that some of the securities being provided by the borrower as collateral under the agreement may not be guaranteed by the United States, in addition to satisfying the notice requirements already contained in paragraph (b)(3) of Rule 15c3-3.

III. General Request for Comments

The Commission solicits comments on the above proposals. The Commission specifically solicits comment on the types of collateral that, if deemed permissible, would materially add liquidity to the securities lending markets, and, at the same time, meet the customer protection objectives of Rule 15c3-3. Further, the Commission solicits comment on whether the correct factors for evaluating potentially permissible collateral have been selected, or should additional factors be considered or identified factors be eliminated. The Commission also solicits comments on the appropriate methods for evaluating the potentially permissible collateral.

The Commission also seeks comment generally on whether Rule 15c3-3(b)(3)(iii) should limit the types of collateral that must be supplied by a broker-dealer in borrowing from an institutional customer or whether the collateral should be left to negotiation between a particular institutional customer and broker-dealer after adequate disclosure. If the latter, should the ability to negotiate collateral be limited to a certain category of institutional customers? How should we define this category? What disclosures would be necessary if the collateral were left to negotiation? Should there be any required minimum amount of collateral to protect the customer and the broker-dealer?

IV. Paperwork Reduction Act

The proposal does not require a new collection of information. The proposed amendment does not alter the range of collateral that a broker-dealer can pledge when borrowing customer securities, but instead amends the rule to establish criteria that the Commission will consider when issuing an order. In connection with Rule 15c3-3, the Commission submitted to the Office of Management and Budget, pursuant to the Paperwork Reduction Act, a request for approval and received an OMB control number for the rule, OMB control number 3235-0078.

V. Costs and Benefits of the Proposed Rule Amendments

The Commission is considering the costs and benefits of the proposed amendment to Rule 15c3-1.

The primary benefits of the amendment should be lowered borrowing costs and increased liquidity in the securities lending markets. The current collateral requirements in Rule 15c3-3 make it more economical for broker-dealers to borrow securities from other broker-dealers (which are not customers) since customers must be provided with a limited range of collateral. In such a case, the broker-dealer would be limited to borrowing the securities from broker-dealers agreeable to accepting another type of collateral. Expanding the categories of collateral will increase the supply of eligible lenders, which should decrease costs as a consequence of greater competition.

On the other side, customers will have the opportunity to enter into more lending transactions with broker-dealers. This will allow them to earn the fees associated with such transactions and thereby realize greater returns on their securities portfolios. The increased opportunities to borrow and lend securities should add liquidity to the securities lending markets.

The Commission does not believe there are any direct costs associated with the proposal, as it is deregulatory. The amendment will have no impact on broker-dealers that do not borrow customer securities or customers that do not lend securities. For those who participate in such transactions, the amendment is not imposing any changes as to how they must be structured. As described above, it will provide greater opportunities; however, it also maintains the status quo, and therefore, broker-dealers and customers do not have to avail themselves of these new opportunities. Broker-dealers can continue to pledge the types of

collateral currently allowed under the rule and, while new categories of collateral may have risk characteristics that differ from those applicable to currently permitted collateral, customers could choose not to accept new categories of collateral.

The Commission requests comment on this analysis of the costs and benefits of the proposed rule amendments and invite commenters to submit their own estimates of costs and benefits that would result from the proposal. In order to evaluate fully the costs and benefits associated with the proposed amendments, we request that commenters' estimates of the costs and benefits of the proposed amendments be accompanied by specific empirical data supporting their estimates.

VI. Effects on Competition, Efficiency, and Capital Formation

Section 3(f) of the Exchange Act requires the Commission, when engaged in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action would promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act requires the Commission to consider the impact on competition of any rule proposed under that Act. In addition, the law requires that the Commission not adopt any rule that would impose a burden on competition not necessary or appropriate in the furtherance of the purposes of the Exchange Act.

The Commission preliminarily believes the proposed amendment should improve efficiency, competition, and capital formation by adding liquidity to the securities lending markets, lowering the costs of borrowing securities, and providing investors with the opportunity to realize greater returns on their securities portfolios. In addition, the proposed amendment should have no anticompetitive effects not necessary or appropriate in furtherance of the purposes of the Act because it would apply equally to all broker-dealers.

To evaluate more fully the effects on competition of the proposed amendments, the Commission is requesting that commenters provide views and specific empirical data as to any effects their adoption would have on competition. The Commission also requests comments on what effect the proposals, if adopted, would have on efficiency and capital formation.

¹⁷ For example, a broker-dealer that needed to borrow equity or debt securities of a U.S. company could pledge debt securities of another company (U.S. or foreign), provided the company issuing the securities being pledged is rated "AAA" or "AA."

VII. Regulatory Flexibility Act Certification

Section 3(a) of the Regulatory Flexibility Act¹⁸ requires the Commission to undertake an initial regulatory flexibility analysis of the effects of proposed rules and rule amendments on small entities, unless the Chairman certifies that the rules and rule amendments, if adopted, would not have a significant economic impact on a substantial number of small entities.¹⁹

The amendment is unlikely to have a significant economic impact on a substantial number of small entities because it concerns an activity that is only engaged in by entities that are not deemed "small" under the Regulatory Flexibility Act. Under Rule 15c3-3, a broker-dealer must pledge certain specified categories of collateral when borrowing fully paid or excess margin securities from its customers. The proposed amendment to Rule 15c3-3 would increase the range of permissible collateral by allowing broker-dealers to pledge such other collateral as the Commission designates by Order as being appropriate in the public interest and consistent with the protection of investors after giving consideration to the collateral's liquidity, volatility, market depth and location, and the issuer's creditworthiness.

According to the Commission's Office of Economic Analysis, as of December 31, 2000, there were approximately 409 broker-dealers that carried customer securities, and therefore could conceivably borrow fully paid or excess margin securities from their customers. Of these 409 broker-dealers, only sixteen firms met the definition of a "small business" or "small organization" as those terms are defined in Commission Rule 17 CFR 240.0-10. Moreover, not one of these sixteen "small" broker-dealers reported borrowed securities on their balance sheets in their quarterly FOCUS filings during 1998, 1999 and 2000. This would indicate that these broker-dealers do not borrow any securities, let alone customer securities, as part of their business activities. Accordingly, the proposed amendment—which relates to broker-dealer borrowings of customer securities—should have no impact on the few "small" entities that could conceivably engage in this activity. The primary effect of the proposal would be on broker-dealers that are not considered small entities under the Regulatory Flexibility Act.

The Chairman has certified that the proposed amendments would not have a significant economic impact on a substantial number of small entities. A copy of the certification is attached as Appendix A.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is also requesting information regarding the potential impact of the proposed rules and rule amendments on the economy on an annual basis. Commenters should provide empirical data to support their views.

VIII. Statutory Authority

Pursuant to the Exchange Act and particularly Sections 15(c)(3), 23(a) and 36 thereof, 15 U.S.C. 78o(c)(3), 78w, and 78mm, the Commission proposes to amend § 240.15c3-3 of Title 17 of the Code of Federal Regulation in the manner set forth below.

List of Subjects

17 CFR Part 240

Broker-dealers, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule Amendments

In accordance with the foregoing, the Commission proposes to amend Title 17, Chapter II of the Code of Federal Regulations as follows.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The general authority citation for Part 240 is amended by adding the following citation.

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, and 80b-11, unless otherwise noted.

* * * * *

Section 240.15c3-3 is also issued under secs. 15 U.S.C. 78o, 78q, 78w, 78fff.

* * * * *

2. Section 240.15c3-3 is revised by removing the authority following § 240.15c3-3 and revising paragraph (b)(3)(iii) to read as follows:

§ 240.15c3-3 Customer protection—reserves and custody of securities.

* * * * *

(b) Physical possession or control of securities. * * *

(3) * * *

(iii) Specifies that the broker or dealer:

(A) Must provide to the lender, upon the execution of the agreement or by the close of the business day of the loan if the loan occurs subsequent to the execution of the agreement, collateral, which fully secures the loan of securities, consisting exclusively of cash or United States Treasury bills and Treasury notes or an irrevocable letter of credit issued by a bank as defined in Section 3(a)(6)(A)—(C) of the Act (15 U.S.C. 78c(a)(6)(A)—(C)) or such other collateral as the Commission designates as permissible by order as necessary or appropriate in the public interest and consistent with the protection of investors after giving consideration to the collateral's liquidity, volatility, market depth and location, and the issuer's creditworthiness; and

(B) Must mark the loan to the market not less than daily and, in the event that the market value of all the outstanding securities loaned at the close of trading at the end of the business day exceeds 100 percent of the collateral then held by the lender, the borrowing broker or dealer must provide additional collateral of the type described in paragraph (b)(3)(iii)(A) of this section to the lender by the close of the next business day as necessary to equal, together with the collateral then held by the lender, not less than 100 percent of the market value of the securities loaned; and

* * * * *

By the Commission.

Dated: June 3, 2002.

Jill M. Peterson,

Assistant Secretary.

Note: Appendix A to the preamble will not appear in the Code of Federal Regulations.

Appendix A

Securities and Exchange Commission Regulatory Flexibility Act Certification

I, Harvey L. Pitt, Chairman of the Securities and Exchange Commission (the "Commission"), based on the representations of the Division of Market Regulation, and the analysis of the Office of Economic Analysis and the Office of the General Counsel provided to me, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendment to paragraph (b)(3) of Commission Rule 15c3-3 (17 CFR 240.15c3-3), would not, if adopted, have a significant economic impact on a substantial number of small entities.

Dated: May 31, 2002.

Harvey L. Pitt, Chairman.

[FR Doc. 02-14296 Filed 6-7-02; 8:45 am]

BILLING CODE 8010-01-P

¹⁸ 5 U.S.C. 603(a).

¹⁹ 5 U.S.C. 605(b).

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-46014; File No. S7-19-02]

RIN 3235-A150

Confirmation Requirements for Transactions of Security Futures Products Effected in Futures Accounts

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: In accordance with the Commodity Futures Modernization Act of 2000 ("CFMA"), the Securities and Exchange Commission ("SEC" or "Commission") is publishing for comment proposed rule amendments and a new rule under the Securities Exchange Act of 1934 ("Exchange Act"). The proposed rule amendments and new rule are designed to clarify the disclosures broker-dealers effecting transactions in security futures products in customer futures accounts must make in the confirmations sent to customers regarding those transactions. The amendments would exclude certain broker-dealers effecting transactions in security futures products in customer futures accounts from the SEC's confirmation disclosure rule, provided that the transaction confirmations for these accounts disclose specific information and notify customers that certain additional information would be available upon written request. The new rule would also provide that broker-dealers effecting transactions for customers in security futures products in a futures account are exempt from the disclosure requirements of Exchange Act Section 11(d)(2).

DATES: Comments should be received on or before July 10, 2002.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments also may be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7-19-02; this file number should be included on the subject line if e-mail is used. Comment letters received will be available for public inspection and copying in the SEC's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549-0102. Electronically submitted comment letters will be posted on the SEC's Internet web site (<http://www.sec.gov>). The SEC does not edit personal

identifying information, such as names or e-mail addresses, from electronic submissions. Submit only the information you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT:

Catherine McGuire, Chief Counsel, Patricia Albrecht, Special Counsel, or Norman Reed, Staff Attorney, at (202) 942-0073, Office of the Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549-1001.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The CFMA permits the trading of security futures, *i.e.*, futures contracts on individual securities and on narrow-based security indexes.¹ The CFMA defines security futures both as "securities" under the federal securities laws,² and as futures contracts for purposes of the Commodity Exchange Act ("CEA").³ Accordingly, the SEC and the Commodity Futures Trading Commission ("CFTC") have joint jurisdiction over the intermediaries and markets that trade security futures products ("SFPs").

Because they are subject to regulation both as securities and as futures contracts, SFPs must be traded on trading facilities and through intermediaries that are registered with

both the SEC and the CFTC. The CFMA amended the CEA and the Exchange Act to provide notice registration procedures for persons that may be required to register with the SEC or the CFTC solely because they are effecting SFP transactions. Under the notice registration procedures, a futures commission merchant ("FCM") may register with the SEC pursuant to Section 15(b)(11) of the Exchange Act and the rules adopted by the SEC⁴ ("Notice BD") and a broker-dealer may register with the CFTC pursuant to Section 4f(a)(2) of the CEA and rules adopted by the CFTC⁵ ("Notice FCM").

Notice BDs are exempt from certain provisions of the Exchange Act,⁶ and Notice FCMs are exempt from certain provisions of the CEA.⁷ These statutory provisions were designed to allow persons that previously had engaged "solely" in either the securities or futures business to participate in SFP business without being subject to conflicting or duplicative regulation. The CFMA does not exempt firms that are "fully-registered" with both the CFTC and the SEC ("Full FCM/Full BDs") from any provisions of the Exchange Act or the CEA.

The CFMA requires the SEC, in consultation with the CFTC, to issue such rules, regulations, or orders as are necessary to avoid duplicative or conflicting regulations applicable to Full FCM/Full BDs with respect to the treatment of customer funds, securities, or property, maintenance of books and records, financial reporting, or other financial responsibility rules, involving SFPs.⁸ In absence of this proposed rulemaking, every firm effecting transactions in SFPs would need to comply with all of the confirmation disclosure requirements of the Exchange Act and the CEA, which would create the kind of duplicate regulation for SFPs that the CFMA's direction attempts to avoid.

II. Proposed Amendments and New Rule

A. Rule 10b-10

Generally, Exchange Act Rule 10b-10 requires broker-dealers that effect transactions for customers in securities, other than U.S. savings bonds or

¹ Pub. L. 106-554, 114 Stat. 2763. Under Exchange Act Section 3(a)(55)(A), the term "security future" is defined as a contract of sale for future delivery of a single security or of a narrow-based security index. 15 U.S.C. 78c(a)(55)(A). Under Exchange Act Section 3(a)(56), the term "security futures product" is defined as a security future or an option on security future. 15 U.S.C. 78C(a)(56).

² See, e.g., Exchange Act Section 3(a)(10) (15 U.S.C. 78c(a)(10)).

³ The term "security future" is defined in CEA Section 1a(31) (7 U.S.C. 1a(31)) as a contract of sale for future delivery of a single security or of a narrow-based security index. Under CEA Section 1a(33) (7 U.S.C. 1a(33)), the term "security futures product" is defined as a security future or an option on a security future.

⁴ 15 U.S.C. 78o(b)(11)(a)(i) and Exchange Act Release No. 44730 (August 21, 2001), 66 FR 45137 (August 27, 2001).

⁵ 7 U.S.C. 6f(a)(2) and 66 FR 43080 (August 17, 2001).

⁶ Exchange Act Section 15(b)(11)(B) (15 U.S.C. 78o(b)(11)(B)).

⁷ CEA Section 4f(a)(4)(A) (7 U.S.C. 6f(a)(4)(A)).

⁸ Exchange Act Section 15(c)(3)(B) (15 U.S.C. 78o(c)(3)(B)). Cf. CEA Section 4d(c) (7 U.S.C. 6d(c)) (providing the same requirement for the CFTC).

municipal securities,⁹ to provide a confirmation, at or before the completion of each transaction, disclosing certain basic terms of the transaction. The confirmation requires, among other things, the disclosure of: the date, identity, price, and number of shares bought or sold;¹⁰ the capacity of the broker-dealer;¹¹ the net dollar price and yield of a debt security;¹² and, under specified circumstances, the amount of compensation paid to the broker-dealer and whether payment for order flow is received.¹³ The customer confirmation requirement, portions of which have been in effect for over 50 years, provides basic investor protections by conveying information allowing investors to verify the terms of their transactions; alerting investors to potential conflicts of interest with their broker-dealers; acting as a safeguard against fraud; and providing investors a means to evaluate the costs of their transactions and the quality of their broker-dealer's execution.¹⁴

Although the CFMA exempted Notice BDs from certain Exchange Act provisions, including Exchange Act Section 11,¹⁵ it did not exempt them from Exchange Act Section 10 and the rules promulgated thereunder, including Exchange Act Rule 10b-10.¹⁶ In addition, as stated previously, the CFMA did not exempt Full FCM/Full BDs from any provisions of the Exchange Act or the rules promulgated thereunder. Accordingly, under the CFMA, entities effecting SFP transactions in futures accounts currently are required to meet the confirmation disclosure requirements of both the CEA and the Exchange Act and the rules thereunder.

CEA Rule 1.33(b)¹⁷ provides the disclosure requirements FCMs effecting futures transactions must follow. However, although CEA Rule 1.33(b) requires an FCM to provide a customer with a "written confirmation of each

commodity futures transaction,"¹⁸ it does not specify what information must be included in the confirmation.¹⁹ The rules of certain futures exchanges, such as the Chicago Mercantile Exchange ("CME") and the Chicago Board of Trade ("CBOT"),²⁰ require an FCM to disclose in writing no later than the following business day after each transaction specific information regarding that transaction effected in a futures account. Information that must be disclosed includes the commodity bought or sold, the quantity, the price, and the delivery month.²¹ The CBOT also requires disclosure of the name of the other party to the contract (in other words, the FCM on the opposite side of the contract) or a notice disclosing that such information is available upon request.²²

In a joint release issued by the SEC and the CFTC ("the Commissions") proposing customer protection, recordkeeping, reporting, and bankruptcy rules for accounts holding SFPs,²³ the Commissions requested comment on the application to transactions in SFPs of their confirmation rules (Rule 10b-10 under the Exchange Act²⁴ and Rule 1.33(b) under the CEA²⁵). Of the three comment letters the Commissions received, two specifically addressed the Commissions' requests for comments on the subject of confirmations for SFPs.²⁶

¹⁸ 17 CFR 1.33(b)(1).

¹⁹ CEA Rule 1.33b(2) (17 CFR 1.33(b)(2)) does specify the detail required in a confirmation of a commodity option transaction. In addition, CEA Rule 1.46(a) (17 CFR 1.46(a)) requires an FCM to furnish a futures or options customer a purchase-and-sale statement when an offsetting transaction is executed showing the financial result of the transactions in involved.

²⁰ See, e.g., CME Rule 537; CBOT Rules 421.00 and 421.01.

²¹ CME Rule 537; CBOT Rules 421.00.

²² See, e.g., CBOT Rules 421.00 and 421.01.

²³ Exchange Act Release. No. 44854 (September 26, 2001), 66 FR 50786 (October 4, 2001).

²⁴ 17 CFR 240.10b-10.

²⁵ 17 CFR 1.33(b). Specifically, CEA Rule 1.33(b)(1) requires FCMs that effect futures transactions for customers to provide, no later than the next business day after the transaction, "a written confirmation of each commodity futures transaction caused to be executed by it * * *."

²⁶ Letter dated December 5, 2001, from Thomas W. Sexton, Vice President and General Counsel, National Futures Association, to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission; Letter dated December 5, 2001, from John M. Damgard, President, Futures Industry Association, and Mark E. Lackritz, President, Securities Industry Association, to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission. The other letter, dated December 4, 2001, from James J. McNulty, Chicago Mercantile Exchange, Inc. and David J. Vitale, Board of Trade of the City of Chicago, Inc. to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, did not address the application of the confirmation requirements of the Commission and

As an initial matter, the Commissions asked whether the application of the confirmation rules to FCMs and broker-dealers should follow from the type of account in which the SFPs are effected. One commenter supported having confirmation statements follow the type of the account and recommended that the SEC adopt a rule that would exempt SFPs carried in futures accounts from Exchange Act Rule 10b-10.²⁷ The other commenter suggested that the SEC clarify that Exchange Act Rule 10b-10 would not apply to a Notice BD or a Full FCM/Full BD carrying SFPs in a futures account.²⁸

The Commissions also asked whether the information that FCM customers currently receive on confirmations would fulfill the purposes of Rule 10b-10 or whether FCMs should provide the particular information required by Rule 10b-10 to customers in SFP transactions upon the customers' request, to the extent that information is not already provided on the confirmations that the FCM prepares. In addition, the Commissions asked what it would cost FCMs to provide the information required under Rule 10b-10 on SFP confirmations.

One commenter noted that confirmations of futures transactions generally provide much of the same information required by Rule 10b-10. Moreover, this commenter stated that futures customers understand that they have a right to request information in addition to that specifically disclosed on the confirmation. Some of this additional information includes the time of the transaction and the name of the person on the opposite side of the transaction.²⁹ The commenter noted this is the same information that Rule 10b-10 generally allows broker-dealers to choose whether to disclose in the confirmation or to make available upon written request of the customer.³⁰ This commenter also maintained that applying Rule 10b-10(a)(2)—which

the CFTC but did support account specific recordkeeping requirements.

²⁷ Letter dated December 5, 2001, from Thomas W. Sexton, Vice President and General Counsel, National Futures Association, to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission.

²⁸ Letter dated December 5, 2001, from John M. Damgard, President, Futures Industry Association, and Mark E. Lackritz, President, Securities Industry Association, to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission.

²⁹ Letter dated December 5, 2001, from Thomas W. Sexton, Vice President and General Counsel, National Futures Association, to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission.

³⁰ See Exchange Act Rule 10b-10(a)(1) and (a)(2)(i)(A) (17 CFR 240.10b-10(a)(1) and (a)(2)(i)(A)).

⁹ Municipal securities are covered by a parallel rule MSRB Rule G-15, which applies to all municipal securities-dealers—both bank and non-bank dealers.

¹⁰ 17 CFR 240.10b-10(a)(1).

¹¹ 17 CFR 240.10b-10(a)(2) and (8).

¹² 17 CFR 240.10b-10(a)(5) and (6).

¹³ See, e.g., 17 CFR 240.10b-10(a)(2)(i)(B), (C) and (D); 17 CFR 240.10b-10(a)(8)(i)(A).

¹⁴ Exchange Act Release. No. 34962 (November 10, 1994), 59 FR 59612 (November 17, 1994).

¹⁵ Exchange Act Section 15(b)(11)(B) (15 U.S.C. 78o(b)(11)(B)).

¹⁶ 17 CFR 240.10b-10.

¹⁷ 17 CFR 1.33(b). Specifically, CEA Rule 1.33(b)(1) requires FCMs that effect futures transactions for customers to provide, no later than the next business day after the transaction, "a written confirmation of each commodity futures transaction caused to be executed by it * * *."

requires a broker-dealer to disclose whether it is acting as a principal or agent in a transaction—to confirmations of SFP transactions would create operational and programming burdens for FCMs without providing corresponding benefits.³¹

The Commissions also requested information on whether there would be any costs to broker-dealers to provide the information required under CEA Rule 1.33(b) on SFP confirmations and how long it would take firms to implement systems to provide this information. In addition, the Commissions asked whether any other considerations relating to customers should be taken into account. The Commissions did not receive any comments on these queries.

After carefully considering all of the comments received, the SEC has decided to avoid duplicate regulation by proposing a new paragraph (e) to Rule 10b-10. New paragraph (e) would clarify the type and nature of information a Notice BD and a Full FCM/Full BD must disclose under Rule 10b-10 in confirmations of SFP transactions effected in futures accounts. In doing so, we have taken into account the disclosure requirements of CEA Rule 1.33(b) and the disclosure rules of the CME and the CBOT.³²

Amended Rule 10b-10(e) would require essentially the same type and nature of information required under CEA Rule 1.33(b) and the above-described futures exchange rules, as well as additional information concerning the capacity in which the Notice BD or Full FCM/Full BD is acting when effecting an SFP transaction and information regarding payment for order flow. It also would conform to the timing requirements that are customary for futures confirmations.

Specifically, Rule 10b-10(e)(1) would provide that, as long as certain conditions are met, the requirements of paragraphs (a) and (b) of Rule 10b-10 will not apply to a Notice BD or a Full FCM/Full BD that effects transactions for customers in SFPs in a futures account (as that term is defined in proposed Exchange Act Rule 15c3-3(a)(15)).³³ First, under subparagraph (i) of proposed paragraph (e)(1), the Notice BD or Full FCM/Full BD must give or

send to the customer, no later than the next business day after execution of any SFP transaction, written notification disclosing: the date the transaction was executed, the identity of the single security or narrow-based security index underlying the contract for the SFP, the number of shares or units (or principal amount) of such SFP purchased or sold, the price, and the delivery month. Second, under subparagraph (ii) of proposed paragraph (e)(1), the Notice BD or Full FCM/Full BD must give or send to the customer no later than the next business day after execution of any SFP transaction, written notification disclosing the source and amount of any remuneration received or to be received in connection with the transaction. This includes, but is not limited to, any markup, commissions, costs, fees, and other charges incurred in connection with the transaction.

From discussions with industry participants, our staff understands that this information is routinely disclosed in confirmations on futures transactions.³⁴ The staff also understands from these discussions that customers in the futures markets may negotiate to pay commissions or fees on futures transactions based on the purchase and subsequent liquidating sale or based on the sale and subsequent covering purchase rather than paying the commissions or fees at both the initiating and closing trade.³⁵

Regardless, confirmation statements are sent to customers after both the initiating and closing trades, and the remuneration information in these confirmation statements reflects how the customers have chosen to pay commissions and fees. This disclosure system is designed to ensure that the customer is consistently aware of the nature and amount of the commissions and fees he is paying for the transactions effected in his futures account.³⁶ Accordingly, we believe that this same disclosure system for fees and commissions for SFP transactions effected by Notice BDs and Full FCM/Full BDs in futures accounts is

sufficient for purposes of Rule 10b-10(e)(1)(ii).

Subparagraph (iii) of Rule 10b-10(e)(1) would also require the Notice BD or Full FCM/Full BD to give or send to the customer no later than the next business day after execution of any SFP transaction, written notification disclosing the fact that certain information will be available upon written request of the customer. This includes information about the time of the execution of the transaction and the identity of the other party to the contract. We believe that, while this information does not necessarily need to appear on the confirmation statement itself, the customer should have notice that it is available and will be provided upon written request.

Subparagraph (iii) also would require the Notice BD or Full FCM/Full BD to disclose that it will provide upon written request of the customer information regarding whether the broker or dealer is acting as agent for such customer, as agent for some other person, as agent for both such customer and some other person, or as principal for its own account; and, if the broker or dealer is acting as principal, whether it is engaging in a block transaction or an exchange of SFPs for physical securities ("EFP"). Although Rule 10b-10(a)(2) requires this information to appear in a confirmation of a securities transaction, we note that confirmations of futures transactions do not generally include this information. A commenter has also noted that customers would be aware of block trades and exchanges for physicals because these transactions require customer consent and that it would be unduly burdensome to require futures confirmations systems to capture and transmit this information.³⁷

The nature of the futures markets appears to provide the reasons for this disparity. First, the CEA and CFTC Regulations require most futures transactions to be agency transactions.³⁸ An FCM conducts futures transaction in a principal capacity only when conducting a block trade or an EFP.³⁹

³¹ Letter dated December 5, 2001, from Thomas W. Sexton, Vice President and General Counsel, National Futures Association, to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission.

³² See CME Rule 537; CBOT Rules 421.00 and 421.01.

³³ Exchange Act Release No. 44854 (September 25, 2001), 66 FR 50785 (October 4, 2001).

³⁴ See Memorandum to file number S7-17-01 regarding February 12, 2002 Conference call between Commission staff members and representatives of Morgan Stanley Dean Witter (March 13, 2002).

³⁵ See Memorandum to file number S7-17-01 regarding February 27, 2002 and March 5, 2002 conversations between Securities and Exchange Commission staff member and representative of Morgan Stanley Dean Witter (March 12, 2002).

³⁶ See Memorandum to file number S7-17-01 regarding February 27, 2002 and March 5, 2002 conversations between Securities and Exchange Commission staff member and representative of Morgan Stanley Dean Witter (March 12, 2002).

³⁷ Letter dated December 5, 2001, from Thomas W. Sexton, Vice President and General Counsel, National Futures Association, to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission. See, e.g., CRE Rules 526 and 538, BrokerTec Futures Exchange ("BTEX") Rules 406 and 407; see also Chicago Board of Trade's Proposal to Adopt Block Trading Procedures, 65 FR 58051 (September 27, 2000).

³⁸ See CEA Section 4b(a)(iv) (7 U.S.C. 6b(a)(iv)) and CFTC Regulations 1.38 and 1.55.2(a)-(b) (17 CFR 1.38 and 155.2(a)-(b)).

³⁹ See Memorandum to file number S7-17-01 regarding March 11, 2002, and March 12, 2002, conversations between Securities and Exchange

Block trades and EFPs are privately-negotiated transactions that may be traded apart from the public auction market either on or off the exchange trading floor.⁴⁰ In addition, a block trade executed on an exchange generally cannot trigger the execution of conditional orders, such as stop orders, or otherwise affect orders in the regular market.⁴¹ An FCM that effects block trades and EFPs must meet stringent exchange rules, including keeping and maintaining detailed records of the transactions, timely reporting the transactions to the relevant exchange and/or clearing organization, and obtaining customer consent for the transactions.⁴²

Nevertheless, an SFP is not only a futures product but a security product, and, as reflected in Rule 10b-10(a)(2) and Exchange Act Section 11(d)(2),⁴³ we consider that a broker-dealer's capacity when effecting a securities transaction is important information that should be available to a customer. We recognize, however, that requiring a confirmation of an SFP transaction effected in futures accounts to disclose whether the Notice BD or Full FCM/Full BD effected the transaction as an agent (and who the entity was an agent for) or a principal could create operational and programming burdens. Therefore, Rule 10b-10(e)(1)(iii) would require only that the information be made available upon written request of the customer.

Because the futures industry has never previously been required to provide this type of information on a regular basis, it may need additional time to adjust its members' operational systems, not only to capture this information when necessary, but also to disclose on the confirmation itself that the information is available upon a customer's written request. Therefore, as explained further below, new Rule 10b-10(e)(2) would provide that the provisions of Rule 10b-10(e)(1)(iii) do not become effective for broker-dealers effecting SFP transactions in futures accounts until June 1, 2003, as long as the broker-dealers meet certain conditions. This transitional provision should provide the futures industry with sufficient time to make the necessary adjustments to their systems to comply with Rule 10b-10(e)(1)(iii).

Commission staff member and representative of Credit Suisse First Boston (March 12, 2002).

⁴⁰ See CME Rules 526, 538; CME Rulebook definitions of "Exchange-For-Physical" and "Block Trade;" see also ("BTEX") Rules 406, 407.

⁴¹ See CME Rule 526.E.

⁴² See BTEX Rule 406(d) and (f); BTEX Rule 407(h) and (i); CME Rules 520, 526.A and H, 538.4.

⁴³ 15 U.S.C. 78k(d)(2).

Finally, subparagraph (iv) of Rule 10b-10(e)(1) would require a Notice BD or Full FCM/Full BD to give or send to the customer no later than the next business day after execution of any SFP transaction, written notification disclosing whether it receives payment for order flow for effecting SFP transactions. It must also disclose the fact that the source and nature of any compensation received in connection with the particular transaction will be furnished upon the customer's written request. Our staff understands from discussions with industry representatives that payment for order flow is not currently practiced in the futures industry.⁴⁴ There is no reliable method to predict whether the practice of payment for order flow will develop in relation to SFP transactions. Nevertheless, subparagraph (iv) provides a foundation to address the disclosure of payment for order flow in the event it arises in relation to SFP transactions. Because payment for order flow is not currently a practice in the futures industry, it is unlikely that the operational systems for futures accounts would currently capture such information for disclosure purposes. Therefore, as explained further below, Rule 10b-10(e)(2) would provide the futures industry additional time to modify their systems to capture payment for order flow information.

Because the futures industry may need additional time to make the necessary changes to comply with all of the requirements of Rule 10b-10(e)(1), the Commission proposes to provide a transitional provision to allow the futures industry the extra time to make those changes. Specifically, Rule 10b-10(e)(2)(i) would provide that subparagraph (iii) of Rule 10b-10(e)(1) does not become effective until June 1, 2003, *provided* that, if the broker-dealer receives a written request from a customer for the information Paragraph (e)(1)(iii) requires the broker-dealer to disclose upon a customer's written request, the broker-dealer makes the information available to the customer. Rule 10b-10(e)(2)(ii) would provide that Paragraph (e)(1)(iv) shall also become effective June 1, 2003.

In proposing these amendments to Rule 10b-10, we believe it is important to remind broker-dealers that they would continue to be subject to the antifraud provisions of the federal securities laws, including Exchange Act Rule 10b-5. We note in this regard that

⁴⁴ See Memorandum to file number S7-17-01 regarding March 11, 2002, and March 12, 2002, conversations between Securities and Exchange Commission staff member and representative of Credit Suisse First Boston (March 12, 2002).

the preliminary note to Rule 10b-10 explains that the disclosure confirmation requirements of Rule 10b-10 are in addition to "a broker-dealer's obligation under the general antifraud provisions of the federal securities laws to disclose additional information to a customer at the time of the customer's investment decision." In addition, broker-dealers are still subject to self-regulatory organization rules that, in their current form, require broker-dealers to disclose information that would not be required by our proposed amendments to Rule 10b-10.⁴⁵

We invite comment on all aspects of this amendment to Rule 10b-10. We especially invite comment on the following subjects: (i) What, if any, burdens would result from requiring futures confirmation systems to capture and transmit information regarding capacity and payment for order flow for SFP transactions effected by Notice BDs or Full FCM/Full BDs in a futures accounts; (ii) what, if any, competitive burdens would affect Notice BDs effecting SFP transactions in futures accounts that similarly situated Full FCM/Full BDs would not be subject to; (iii) whether the amendments to Rule 10b-10 providing confirmation requirements for SFP transactions effected in futures accounts could result in competitive disadvantages for broker-dealers effecting SFP transactions in securities accounts that must follow all of the disclosure requirements of Rule 10b-10; (iv) if so, whether the requirements of paragraph (e) should be applied to all SFP transactions regardless of whether the transactions are effected in a securities account or in a futures account; (v) whether there are rules of other exchanges that provide different disclosure requirements that we should consider; (vi) whether there is any additional information that should be disclosed to customers; and (vii) whether the transitional period provides sufficient time to develop the necessary systems to capture the information required to be disclosed under proposed Rule 10b-10(e).

B. Rule 10b-10 SIPC Disclosure Requirement

Exchange Act Rule 10b-10(a)(9)⁴⁶ generally requires that a broker-dealer effecting securities transactions for a customer, or a broker-dealer clearing or carrying a customer's account, disclose in the confirmation if such broker-dealer is not a member of the Securities Investor Protection Corporation

⁴⁵ See, e.g., National Association of Securities Dealers Rule 2230.

⁴⁶ 17 CFR 240.10b-10(a)(9).

(“SIPC”).⁴⁷ This requirement is intended to make clear when customers are not protected by SIPC.

Under the Securities Investor Protection Act of 1970 (“SIPA”), most broker-dealers registered under Exchange Act Section 15(b) must be members of SIPC.⁴⁸ When a SIPC member is liquidated in a SIPC proceeding, due to bankruptcy or other financial difficulties, SIPC will return to customers their cash and securities held by the broker-dealer. To the extent that the broker-dealer does not have sufficient resources to return the cash and securities to customers, SIPC will replace the missing assets, up to \$500,000 per customer (including \$100,000 for cash claims).⁴⁹

We required that a broker-dealer disclose in its confirmations when it is not a SIPC member after we witnessed several incidents involving the financial failure of registered broker-dealers and their unregistered affiliates where customers became confused regarding the application of SIPC coverage to their accounts.⁵⁰ For example, in one of these cases, the failure of a registered broker-dealer and its government securities affiliate, which shared personnel and office facilities and did not distinguish between the two entities in certain written and oral communications, led to customer confusion concerning SIPC coverage. Because government securities brokers and dealers registered under Exchange Act 15C are not members of SIPC, the accounts of the customers of the government securities affiliates were not protected by SIPC.⁵¹

The SIPC disclosure requirement is in addition to a separate regulatory scheme pursuant to Exchange Act Section 15(c)(3) and Exchange Act Rule 15c3-3 to protect customers. That scheme protects the assets of broker-dealer customers by requiring a broker-dealer to follow certain steps to assure that customer assets are not used to fund the broker-dealer’s business.⁵²

The CEA has a different customer protection scheme for customers of FCMs. Under the CEA, customer funds must be segregated and separately accounted for by FCMs.⁵³

The CFMA amended the Exchange Act and SIPA to provide that a Notice BD is not subject to Exchange Act Section 15(c)(3), or the rules promulgated thereunder, and that a Notice BD may not become a member of SIPC.⁵⁴ In addition, the CFMA amended the CEA to provide that a Notice FCM is not subject to the segregation requirements of the CEA.⁵⁵

Full FCM/Full BDs do not have similar exemptions. Accordingly, the SEC and the CFTC have proposed rules that would permit Full FCM/Full BDs either to choose, or allow their customers to choose, whether SFP positions will be held in a futures account subject to CEA segregation requirements or a securities account subject to Rule 15c3-3 and SIPA.⁵⁶ These rules would also require that, before a Full FCM/Full BD accepts an order from a customer for an SFP transaction, the Full FCM/Full BD must obtain a signed acknowledgement that the customer understands which protections would apply to the customer’s particular account. The acknowledgement would have to specify which regulatory regime applies, and the customer would have to sign the acknowledgement stating that he understands that his particular account will not be protected under the alternative regulatory scheme. This acknowledgement is designed to help a customer understand that an SFP held in a futures account is not covered by SIPA and an SFP held in a securities account is not protected by segregation. Notice registrants are not required to obtain this acknowledgment from customers because they are subject only to one customer protection regulatory scheme.

We are requesting comment on whether certain Notice BDs should be required, pursuant to Exchange Act Rule 10b-10(a)(9), to inform customers on a transaction-by-transaction basis that they are not members of SIPC. Should such a requirement be applicable to all notice registrants or to a subset that creates the greatest risk of confusion, such as those notice registrants that are associated persons⁵⁷ of fully-registered

SIPC-member broker-dealers? In addition, we request comment on whether customers would benefit from being informed on a transaction-by-transaction basis that the protections provided by Exchange Act Rule 15c3-3 and SIPA do not apply to SFPs held in futures accounts by Full FCM/Full BDs. Further, we are interested in receiving comment on whether the absence of such disclosures in transaction confirmations could lead to the type of customer confusion the SIPC disclosure requirement in Exchange Act 10b-10(a)(9) was designed to address.

In addition, we note that self-regulatory organizations, such as the National Association of Dealers, Inc. and the National Futures Association, are working to develop model disclosure documents for SFPs. If these documents informed customers that the protections provided by Exchange Act Rule 15c3-3 and SIPA do not apply to SFPs held in futures accounts, would such disclosures provide them with sufficient information so that they would not need to be informed on a transaction-by-transaction basis?

C. Rule 11d2-1

Exchange Act Rule 10b-10(a)(2)⁵⁸ generally requires that a broker-dealer effecting a transaction for a customer must provide written notification at or before the completion of a transaction disclosing the capacity in which the broker-dealer acted when effecting a securities transaction. Similarly, Exchange Act Section 11(d)(2)⁵⁹ prohibits a broker-dealer from effecting any transaction for a customer with respect to any security (other than an exempted security) unless the broker-dealer “discloses to such customer in writing at or before the completion of the transaction whether he is acting as a dealer for his own account, as a broker for such customer, or as a broker for some other person.”

As explained above, amended Rule 10b-10 would provide Full FCM/Full BDs and Notice BDs a conditional exception from the requirement in Exchange Act Rule 10b-10 to disclose the capacity in which they are acting when they effect SFP transactions for a customer in a futures account. Amended Rule 10b-10, however, would not provide an exception from the disclosure requirement of Exchange Act Section 11(d)(2). Under the CFMA, Notice BDs are exempt from the

U.S.C. 78c(a)(9) (“The term “person” means a natural person, company, government, or political subdivision, agency, or instrumentality of a government.”).

⁵⁸ 17 CFR 240.10b-10(a)(2).

⁵⁹ 15 U.S.C. 78k(d)(2).

⁴⁷ See Exchange Act Release No. 34962 (November 10, 1994), 59 FR 59612 (November 17, 1994).

⁴⁸ 15 U.S.C. 78ccc(a)(2) and 78ddd.

⁴⁹ 15 U.S.C. 78fff-3(a)(1).

⁵⁰ Exchange Act Release No. 33743 (March 9, 1994), 59 FR 12767 (March 17, 1994).

⁵¹ See *id.*; see generally, *SEC v. Donald Sheldon Group, Inc. et al.*, Admin. Pro. File No. 3-6626 (Dec. 2, 1988.)

⁵² Exchange Act Section 15(c)(3) (15 U.S.C. 78o(c)(3)) and 17 CFR 240.15c3-3.

⁵³ CEA Section 4f(a)(4)(A) (7 U.S.C. 6f(a)(4)(A)).

⁵⁴ Exchange Act Section 15(b)(11)(B)(iii) (15 U.S.C. 78o(b)(11)(B)(iii)); SIPA Section 3(a)(2)(A) (15 U.S.C. 78ccc(a)(2)(A)).

⁵⁵ CEA Section 4f(a)(4)(A)(ii) (7 U.S.C. 6f(a)(4)(A)(ii)).

⁵⁶ Exchange Act Release No. 44854 (September 26, 2001), 66 FR 50786 (October 4, 2001).

⁵⁷ See Exchange Act Section 3(a)(18) (15 U.S.C. 78c(a)(18)) (“The term “person associated with a broker or dealer” or “associated person of a broker or dealer” means * * * any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer * * *.”); see also Exchange Act Section 3(a)(9) (15

provisions of Exchange Act Section 11.⁶⁰ This exemption, however, does not apply to Full FCM/Full BDs.

We believe that requiring Full FCM/Full BDs to comply with the disclosure requirement of Exchange Act Section 11(d)(2) would be inconsistent with the relief provided in the proposed amendments to Rule 10b-10. Therefore, to provide consistent relief, we are proposing an exemption from the disclosure requirement of Exchange Act Section 11(d)(2).⁶¹ This exemption would be available only to Full FCM/Full BDs that effect SFP transactions in futures accounts and would allow them to effect SFP transactions in futures accounts without being required to disclose the capacity in which they are acting when they effect these transactions.

We invite comments on all aspects of proposed Rule 11d2-1. We especially invite comment on whether this exemption for Full FCM/Full BDs will have any anticompetitive impact on broker-dealers that are not eligible for this exemption.

III. General Request for Comments

We invite interested persons to submit written comments on all aspects of the proposed amendments and new rule, in addition to the specific requests for comments included in the release. Further, we invite comment on other matters that might have an effect on the proposals contained in the release, including any competitive impact.

Additionally, we request comment on whether broker-dealers executing trades in futures accounts for certain customers should be subject only to the confirmation requirements prescribed by the CFTC and the futures exchanges. Specifically, should broker-dealers effecting SFP transactions in customers' futures accounts be exempted from the disclosure requirements of Rule 10b-10 for their sophisticated institutional customers who are "qualified investors," as that term is defined in the Exchange Act Section 3(a)(54),⁶² if: (1) The institutional customers, after receiving full disclosure, knowingly agree not to receive information on the capacity in which a broker-dealer is acting when effecting SFP transactions in a customer's futures account and any information regarding payment for order flow; and (2) the disclosure rules of the CFTC and/or the futures exchanges, at a minimum, require disclosure of basic

information, as specified in proposed paragraph (e)(1)(i) and (ii), the identity of the other party to the contract, and the time of the execution of the transaction (or the fact that information regarding the identity of the other party to the contract and the time of the execution of the transaction will be available upon request)? Should we use the statutory definition of "qualified investors" for purposes of this exemption, or should we define the category of customers differently?

More generally, in order to help us determine whether, and to what extent, direct regulation in this area is necessary, and to minimize the burdens associated with duplicative regulation while maintaining investor protection, we request detailed comments from futures exchanges that plan to trade security futures on their rules that will apply to the trading of security futures and whether there are any differences or similarities between those rules and the proposed amendments to Rule 10b-10 regarding the information required to be provided to customers effecting security futures transactions in futures accounts.

IV. Paperwork Reduction Act

Certain provisions of the proposed amendments to Exchange Act Rule 10b-10 contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.⁶³ The Commission has submitted the proposed amendment to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The Commission is revising the collection of information entitled "Proposed Confirmation of Transactions Amendment," OMB Control Number 3235-0444. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

A. Rule 10b-10

1. Collection of Information Under the Proposed Confirmation of Transactions Amendment

As discussed previously in this release, the Proposed Confirmation of Transactions Amendment would permit alternative information disclosure requirements in confirmations provided to customers for transactions in SFPs in a futures account. This alternative information includes, the date the transaction was executed; the identity and number of shares or units bought or sold; the price and delivery month; the

source and amount of broker remuneration; whether the broker received payment for order flow; and, the fact that other specified information about the execution of the transaction will be available upon written request. This information would be provided to a customer in the form of a confirmation.

2. Proposed Use of Information

The purpose of the proposed amendments to Rule 10b-10 is to provide to investors the information necessary to evaluate their securities transactions and the broker-dealers effecting those transactions. In the absence of the Rule's requirements, investors may not be fully informed of important information relating to their securities transactions. In addition, the confirmations may be used by the Commission, self-regulatory organizations, and other securities regulatory authorities in the course of examinations, investigations, and enforcement proceedings. No governmental agency regularly would receive any of the information described above.

3. Respondents

The proposed amendments to Rule 10b-10 potentially apply to all of the approximately 8,000 fully registered broker-dealers and the projected 1,399 notice registered broker-dealers registered with the Securities and Exchange Commission provided they effect transactions for customers. It is important to note, however, that the provisions of the Proposed Confirmation of Transactions Amendments would apply only to the approximately 5,600 fully registered broker-dealers that conduct business with the general public and the approximately 1,399 of the projected notice registered broker-dealers that conduct business with the general public.

4. Total Annual Reporting and Recordkeeping Burden

We estimate that there will be 100 million confirmations during the first year of trading of security futures products. In our April 29, 2002 order adjusting the fee rates under Section 31 of the Exchange Act, we estimated that we would collect \$450,000 in assessments on round turn transactions in security futures in fiscal 2003.⁶⁴ This estimate was based on the Congressional

⁶⁰ See Exchange Act Section 15(b)(11)(B)(ii) (15 U.S.C. 78o(b)(11)(B)(ii)).

⁶¹ Exchange Act Section 36(a)(1) (15 U.S.C. 78mm(a)(1)); see also Exchange Act Section 23(a)(1) (15 U.S.C. 78w(a)(1)).

⁶² 15 U.S.C. 78c(a)(54).

⁶³ 44 U.S.C. 3501 *et seq.*

⁶⁴ See Order Making 2003 Annual Adjustments to the Fee Rates Applicable Under Section 6(b) of the Securities Act of 1933 and Sections 13(e), 14(g), 31(b) and 31(c) of the Securities Exchange Act of 1934, Release Nos. 33-8095 and 34-45842 (April 29, 2002).

Budget Office's August 28, 2001 estimate of collections for that fiscal year, adjusted to reflect the reduction in the assessment rate included in the Investor and Capital Markets Fee Relief Act.⁶⁵ Dividing the estimated \$450,000 in collections on round turn transactions in security futures by the assessment rate of \$0.009 per round turn transaction yields 50 million round turn transactions. Because each of the estimated 50 million round turn transaction will involve at least two confirmations, we estimate that there will be approximately 100 million confirmations.

Because the process of generating a confirmation is automated, the Commission staff estimates from information provided by industry participants that it takes about one minute to generate and send a confirmation. The Commission staff also estimates from information provided by industry participants that broker-dealers effecting SFP transactions will spend 1.7 million hours complying with the proposed amendments to Rule 10b-10 (100 million confirmations at one minute per confirmation = 100 million minutes; 100 million minutes/60 minutes per hour = 1.7 million hours).

Broker-dealers routinely use confirmations for billing purposes. In addition, broker-dealers would send customers some type of statement regardless of the requirements of the proposed amendments to Rule 10b-10. The amount of confirmations sent and the cost of the confirmations vary from firm to firm. Smaller firms send fewer confirmations than larger firms because they effect fewer transactions.

As stated earlier, the Commission staff estimates that broker-dealers effecting SFP transactions will send approximately 100 million confirmations annually. According to the information provided by industry participants, the average cost per confirmation is estimated to be 89 cents, including postage. The annual cost to the industry for fiscal year 2003 is therefore estimated to be \$89 million.

⁶⁵ See Pub. L. 107-123, 115 Stat. 2390 (2002). In August 2001, the Congressional Budget Office estimated that the Commission would collect \$1,000,000 in assessments on round turn transactions in security futures in fiscal 2003. This estimate was based on an assessment rate of \$0.02 per round turn transaction. The Investor and Capital Markets Fee Relief Act reduced the assessment rate to \$0.009 per round turn transaction. In our fee adjustment order, we adjusted the Congressional Budget Office's estimate to reflect the assessment rate reduction. \$1,000,000 \times 0.009/0.02 = \$450,000.

5. Collection of Information is Mandatory

This collection of information is mandatory.

6. Confidentiality

The collection of information pursuant to the proposed amendments to Rule 10b-10 would be provided by broker-dealers to customers, and also would be maintained by broker-dealers.

7. Record Retention Period

Exchange Act Rule 17a-4(b)(1)⁶⁶ requires broker-dealers to preserve confirmations for three years, the first two years in an accessible place.

8. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility;

(ii) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information;

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

(iv) Minimize the burden of the collection of information on those required to respond, including through the use of automated collection techniques or other forms of information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609, and refer to File No. S7-19-02. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this release in the **Federal Register**, therefore, comments to OMB are best assured of having full effect if OMB receives them within 30 days of this publication. The Commission has submitted the proposed collections of information to OMB for approval. Requests for the materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7-19-

⁶⁶ 17 CFR 240.17a-4(b)(1).

02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

B. Rule 11d2-1

For the reasons discussed above, new Exchange Act Rule 11d2-1 provides an exemption from the capacity disclosure requirement in Exchange Act Section 11(d)(2) for Full FCM/Full BDs that are effecting transactions for customers in SFPs in futures accounts. This exemption from a statutory requirement does not impose recordkeeping or information collection requirements, or other collections of information that require approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Accordingly, the Paperwork Reduction Act does not apply.

V. Costs and Benefits of Proposed Amendments

A. Introduction

Passage of the CFMA in December of 2000 permitted the trading of SFPs and established a framework for joint regulation of SFPs by the CFTC and the SEC. This framework was necessary because the CFMA defined an SFP to be, at the same time, both a security and a contract for future delivery and therefore subject to both the CEA and the Exchange Act and the rules thereunder. Recognizing that some entities may be subject to duplicative or conflicting regulations, the CFMA amended the CEA and the Exchange Act to: (1) Exempt notice-registrants from certain (but not all) sections of the CEA, Exchange Act, and the rules thereunder, and (2) direct the CFTC and the SEC to issue rules, regulations, or orders, as necessary, to avoid certain duplicative or conflicting regulations relating to Full FCM/Full BDs.⁶⁷ Consistent with these provisions, the SEC is proposing to amend Exchange Act Rule 10b-10 by adding new paragraph (e) to Rule 10b-10, and proposing Exchange Act Rule 11d2-1.

B. Rule 10b-10

The proposed amendments to Rule 10b-10 strive to avoid duplicate regulation by requiring disclosure of essentially the same type and nature of information currently required to be disclosed in confirmations of futures transactions at essentially the same time. Specifically, proposed Rule 10b-10(e) provides that a Full FCM/Full BD

⁶⁷ CEA section 4d(c) (7 U.S.C. 6d(c)) and Exchange Act section 15(c)(3)(B) (15 U.S.C. 78o(c)(3)(B)) respectively.

and a Notice BD that effects transactions for customers in security futures products in a futures account (as that term is defined in Exchange Act Rule 15c3-3(a)(15)) does not have to comply with the disclosure requirements of paragraphs (a) and (b) of Rule 10b-10 if the Full FCM/Full BD or Notice BD discloses on the SFP transaction confirmations the date the transaction was executed; the identity and number of shares or units bought or sold; the price and delivery month; the source and amount of broker remuneration; and the fact that the time of the execution of the transaction, the identity of the other party to the contract, and the capacity in which the broker-dealer was acting in effecting the transaction will be available upon written request. The information to be made available upon written request is the same type of information that futures confirmations currently disclose is available to the customer upon written request. Proposed Rule 10b-10(e) also provides that Full FCM/Full BDs and Notice BDs must disclose whether they receive payment for order flow, and if so, must provide the source and nature of such remuneration upon request. In addition, proposed Rule 10b-10(e)(2) provides a phase-in period. Under that provision, broker-dealers are not required until June 1, 2003, to disclose in SFP confirmations information on payment for order flow and the fact that certain information will be provided upon request.

In considering the potential costs and benefits of the proposed amendments to Rule 10b-10, we have considered the transaction confirmation practices of both the futures industry and the securities industry and our duty to protect consumers by requiring adequate disclosure on securities transactions. In addition, we have considered how Full FCM/Full BDs and Notice BDs effecting SFP transactions in futures accounts will have to restructure their confirmation technology. Finally, we have identified specific costs and benefits, and requested comment on additional costs or benefits that may stem from proposed Rule 10b-10(e).

1. Benefits

a. Elimination of Conflicting and Duplicative Regulation

As stated previously, under the CFMA, Notice BDs and Full FCM/Full BDs effecting SFP transactions in futures accounts currently are required to meet the disclosure requirements of both the CEA and the Exchange Act and the rules thereunder. The proposed amendments to Rule 10b-10 are

designed to benefit Notice BDs and Full FCM/Full BDs by avoiding conflicting and duplicative regulation of the disclosure requirements of SFP transactions effected in futures accounts. The proposed amendments accomplish this benefit by clarifying the type and nature of information these entities must disclose under Rule 10b-10 in confirmations of SFP transactions effected in futures accounts. Without the proposed amendments to Rule 10b-10, all Notice BDs and Full FCM/Full BDs would need to change their confirmation systems to comply with all of the disclosure requirements of Rule 10b-10.

The amendments would require delivery of a confirmation at the same point in time and containing essentially the same type and nature of information these registrants currently provide in confirmations of transactions in futures accounts. In addition, the amendments would provide a phase-in period that gives the affected entities until June 1, 2003, to disclose in SFP confirmations information on payment for order flow and the fact that certain information will be provided upon request. Because such information is not generally provided in confirmations of futures transactions, the transitional period will allow these broker-dealers time to make the necessary adjustments to their confirmation technology, not only to amend their confirmations to make the required additional disclosures, but also to ensure that their systems are capturing all of the information that customers are entitled to receive if they make a written request.

b. Customer Understanding

The confirmations for SFP transactions effected in futures accounts pursuant to the proposed amendments of Rule 10b-10 should benefit customers who choose to effect SFP transactions in a futures account but have not previously traded in a futures account by providing them with information similar to the type of information they would receive if they receive confirmations of trades effected in a securities account. In addition, the confirmations of the SFP transactions effected in the futures accounts will disclose specific additional information that the customer may receive if he makes a written request. The amendments should also benefit customers that already have experience in the futures markets and decide to effect SFPs in a futures account by providing them with a confirmation that is similar in type and information to the kind of confirmations they are used to receiving on transactions effected in

futures accounts. In addition, customers should also benefit from the proposed Rule 10b-10 requirement that, if entities begin to receive payment for order flow for SFP transactions executed in futures accounts, they must disclose that fact and disclose upon written request the source and nature of the remuneration.

2. Costs

Pursuant to paragraph (e)(1)(i) of proposed Rule 10b-10, a Full FCM/Full BD and a Notice BD that effect transactions in SFPs in a customer's futures account will not be required to meet the disclosure requirements of Exchange Act Rule 10b-10(a) and (b), which broker-dealers effecting securities transactions must generally meet. Rather, the Full FCM/Full BD and Notice BD would be required to disclose certain information in the confirmation and also disclose in the confirmation the fact that certain additional information is available upon a customer's written request.

Subparagraphs (i) and (ii) of proposed Rule 10b-10(e)(1) require Full FCM/Full BDs and Notice BDs to give or send to the customer no later than the next business day after execution of any SFP transaction, written notification disclosing the date the transaction was executed, the identity of the single security or narrow-based security index underlying the contract for the security futures product, the number of shares or units (or principal amount) of such security futures product purchased or sold, the price, the delivery month, the source and amount of any remuneration received or to be received by the broker in connection with the transaction, including, but limited to, commissions, costs, fees, and other charges incurred in connection with the transaction. We understand that futures confirmations already provide this information.⁶⁸ Therefore, the SEC does not believe that requiring this information on confirmations of SFP transactions effected in futures accounts generates any additional costs to the futures industry.

Subparagraph (iii) of Rule 10b-10(e)(1) would require the Notice BD or Full FCM/Full BD to give or send to the customer no later than the next business day after execution of any futures securities product transaction, written notification disclosing the fact that certain information will be available upon written request of the customer.

⁶⁸ See CME Rule 537; CBOT Rules 421.00 and 421.01; see also Memorandum to file number S7-17-01 regarding February 12, 2002 conference call between Commission staff members and representatives of Morgan Stanley Dean Witter (March 13, 2002).

This includes information about the time of the execution of the transaction, and the identity of the other party to the contract. We understand from discussions with industry representatives that futures confirmations generally disclose that this information is available upon the customer's request.⁶⁹ Therefore, the SEC does not anticipate that this requirement will impose additional costs on the futures industry.

Subparagraph (iii) of Rule 10b-10(e)(1) would also require the Notice BD or Full FCM/Full BD to give or send to the customer no later than the next business day after execution of any futures securities product transaction, written notification disclosing that information regarding whether the broker or dealer is acting as agent for such customer, as agent for some other person, as agent for both such customer and some other person, or as principal for its own account; and if the broker or dealer is acting as principal, whether it is engaging in a block transaction or an exchange of securities futures products for physical securities, will be available upon written request of the customer. From discussions with industry representatives, the SEC staff understands that Full FCM/Full BDs and Notice BDs would not incur substantial expense by adding a disclosure that information regarding the capacity in which the Full FCM/Full BD or Notice BD acted in effecting the transaction is available upon a customer's request.⁷⁰ The SEC staff, however, understands from these discussions that there would be some expense involved in requiring the collection of information relating to the capacity in which the orders are executed in the trading systems, although industry representatives were unable to quantify the potential expenses.⁷¹ Because the futures industry has never previously been required to provide this type of information on a regular basis, it may need additional time to adjust its members' operational systems, not only to capture this information when necessary, but also to disclose on the confirmation itself that the information is available upon a customer's written request. Thus, the proposed rule

⁶⁹ See Memorandum to file number S7-17-01 regarding February 12, 2002 conference call between Commission staff members and representatives of Morgan Stanley Dean Witter (March 13, 2002).

⁷⁰ See Memorandum to file number S7-17-01 regarding February 27, 2002 and March 5, 2002 conversations between Securities and Exchange Commission staff member and representative of Morgan Stanley Dean Witter (March 12, 2002).

⁷¹ See *id.*

contains a transitional provision. Under proposed Exchange Act Rule 10b-10(e)(2), broker-dealers have until June 1, 2003 to disclose that certain information will be provided upon written request, as long as that information can be made available if a customer submits a written request. This transitional provision should provide the futures industry with sufficient time to make the necessary adjustments to their systems to comply with this provision of proposed Exchange Act Rule 10b-10(e)(1)(iv).

Subparagraph (iv) of proposed Rule 10b-10(e)(1) also requires that the Notice BD or Full FCM/Full BD give or send to the customer no later than the next business day after execution of any futures securities product transaction, written notification disclosing whether the entity receives payment for order flow for such transactions and, if it does, it must disclose the fact that the source and nature of the compensation will be furnished upon written request of the customer. The SEC staff understands from discussions with futures industry participants that payment for order flow is not currently a practice in the futures industry.⁷² Accordingly, if the practice does not arise in connection with SFP transactions effected in futures accounts, there would be no costs associated with the proposed disclosure requirement of subparagraph (iii) because there would be nothing to report.

If, however, Full FCM/Full BDS or Notice BDs begin to receive payment for order flow for SFP transactions effected in futures accounts then those entities would need to adjust their operating systems to capture this information. Based on discussions with industry representatives, the SEC understands that systems development costs should be relatively low given the fact that the rule allows for the use of a generic disclaimer, as opposed to information that would require a trade-by-trade coding change. The SEC also understands from these discussions that more extensive costs would be associated with providing specific disclosures upon request about the nature and source of any payment for order flow received in connection with a transaction. Industry representatives,

⁷² See Memorandum to file number S7-17-01 regarding February 12, 2002 conference call between Commission staff members and representatives of Morgan Stanley Dean Witter (March 13, 2002); Memorandum to file number S7-17-01 regarding March 11, 2002, and March 12, 2002, conversations between Securities and Exchange Commission staff member and representative of Credit Suisse First Boston (March 12, 2002).

however, could not quantify the potential costs, in part, perhaps, because the representatives were uncertain whether payment for order flow will become a practice in connection with SFP transactions.⁷³

In considering the costs Notice BDs and Full FCM/Full BDs would have to make to their confirmation systems in order to comply with the proposed amendments, we understand from discussions with industry representatives that these costs are less than the costs these entities would incur if they would have to adjust their confirmation systems to meet all of the Rule 10b-10 disclosure requirements.⁷⁴ Accordingly, the amendments to Rule 10b-10 actually reduce the costs to the affected entities.

We do not anticipate that the proposed amendments to Rule 10b-10 will provide any benefits or costs to broker-dealers effecting SFP transactions in securities accounts because they do not apply to SFP transactions effected in securities accounts. Accordingly, we believe that broker-dealers effecting SFP transactions in securities accounts would use existing systems that currently conform to all of the disclosure requirements of Rule 10b-10 for securities transactions. However, we have solicited comment on that issue and may apply the proposed amendments to Rule 10b-10 to such broker-dealers if it would result in a significant cost savings.

As we noted above, the proposed amendments to Rule 10b-10 would apply only to the approximately 5,600 fully registered broker-dealers that conduct business with the general public and the approximately 1,399 of the projected notice registered broker-dealers that conduct business with the general public. Also, as noted above, we estimate that there will be 100 million confirmations during the first year of trading of security futures products. According to the information provided by industry participants, the average cost per confirmation is estimated to be 89 cents, including postage. Therefore,

⁷³ See Memorandum to file number S7-17-01 regarding March 11, 2002, and March 12, 2002, conversations between Securities and Exchange Commission staff member and representative of Credit Suisse First Boston (March 12, 2002).

⁷⁴ See Memorandum to file number S7-17-01 regarding February 12, 2002 conference call between Commission staff members and representatives of Morgan Stanley Dean Witter (March 13, 2002); Memorandum to file number S7-17-01 regarding March 11, 2002, and March 12, 2002, conversations between Securities and Exchange Commission staff member and representative of Credit Suisse First Boston (March 12, 2002).

we estimate that the annual paperwork cost to the industry for fiscal year 2003 will be \$89 million.

We request comments on the costs and benefits of the proposed amendments to Rule 10b-10. Commenters are strongly encouraged to identify and supply any relevant data, analysis, and estimates concerning the costs and/or benefits of the proposed amendments. Commenters should address in particular whether the proposed amendments to Rule 10b-10 will generate the anticipated benefits or impose the anticipated costs. As always, commenters are specifically invited to share additional quantifiable costs and benefits that they believe may be imposed or generated by the proposed amendments to Rule 10b-10.

C. Rule 11d2-1

Proposed Exchange Act Rule 11d2-1 would provide to Full FCM/Full BDs that are effecting SFP transactions for customers futures accounts an exemption from the requirement in Exchange Act Section 11(d)(2) that a broker-dealer effecting a transaction for a customer disclose in writing, at or before the completion of the transaction, the capacity in which the broker-dealer acted when effecting the transaction. As we have previously explained, we believe that requiring Full FCM/Full BDs to comply with the capacity disclosure requirement of Exchange Act 11(d)(2) would be inconsistent with the exemptive relief provided in proposed amendments to Rule 10b-10 that does not require automatic disclosure of capacity. Therefore, to provide consistent relief, we are proposing new Rule 11d2-1.

We do not anticipate that this exemption will generate large benefits or impose great costs. However, we have identified some potential benefits and costs that could result from Rule 11d2-1.

1. Benefits

This proposed exemption benefits Full FCM/Full BDs by avoiding any potential conflicting regulation regarding the disclosure of capacity when Full FCM/Full BDs effect SFP transactions for customers in futures accounts. This proposed exemption also is designed so that Notice BDs and Full FCM/Full BDs effecting SFP transactions in futures accounts will not have different disclosure requirements. Finally, if the Commission did not propose an exemption from Exchange Act Section 11(d)(2), certain of the anticipated benefits of the proposed amendments to Rule 10b-10 would be undermined.

2. Costs

Proposed Rule 11d2-1 would exempt Full FCM/Full BDs that effect SFP transactions in futures accounts from a statutory requirement to provide specific information to customers regarding the capacity those entities acted in when effecting such transactions. The exemption, therefore, prevents customers from learning this information from the confirmations they receive about these transactions. This cost, however, is ameliorated to a large extent by the fact that, pursuant to proposed amendments to Rule 10b-10, the confirmations of these transactions would inform the customers that information on capacity is available upon the customers' written request.

We request comments on the costs and benefits of proposed Rule 11d2-1 and ask commenters to provide supporting empirical data for any positions advanced. Commenters should address in particular whether proposed Rule 11d2-1 will generate the anticipated benefits or impose the anticipated costs. As always, commenters are specifically invited to share additionally quantifiable costs and benefits that they believe may be imposed or generated by proposed Rule 11d2-1.

VI. Consideration of Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act⁷⁵ requires the Commission, whenever it is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. The proposed amendments to Rule 10b-10 and proposed Rule 11d2-1 are intended to clarify the disclosures broker-dealers effecting SFPs in customer futures accounts must make in the confirmations sent to customers regarding those transactions. We preliminarily believe that delineating the broker-dealers' disclosure obligations regarding SFP products effected in futures accounts should serve as an efficient and cost-effective means for those entities to reconcile their conflicting confirmation disclosure requirements with respect to SFPs. The proposed amendments to Rule 10b-10 and proposed Rule 11d2-1 should promote efficiency because firms may still use their present confirmation systems, after making the required

adjustments, rather than having to build new confirmation systems.

In addition, the proposed amendments to Rule 10b-10 and proposed new Rule 11d2-1 are designed to give investors the information necessary to evaluate their securities transactions and the broker-dealers effecting those transactions. We preliminarily believe that our proposals would improve investor confidence and will therefore promote capital formation.

Section 23(a)(2) of the Exchange Act⁷⁶ requires the Commission, in making rules under the Exchange Act, to consider the impact that any such rule would have on competition. Exchange Act Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. As stated previously, the proposed amendments to Rule 10b-10 and new Rule 11d2-1 are designed to clarify the confirmation disclosure requirements only for broker-dealers effecting SFP transactions in customers' futures accounts and do not apply to broker-dealers effecting SFP transactions in customers' securities accounts. It is possible that the different disclosure requirements provided by the amendments to Rule 10b-10 and new Rule 11d2-1 may place a competitive burden on broker-dealers who must comply with all of the disclosure requirements of Rule 10b-10 because they effect SFP transactions in securities accounts. However, we preliminarily believe that any competitive burden imposed by these amendments and new rule are necessary and appropriate in furtherance of the purposes of the Exchange Act. In addition, we have solicited comment on whether the amendments and new rule impose any costs on broker-dealers effecting SFP transactions in securities accounts, and if so, whether they should also apply to broker-dealers effecting SFP transactions in securities accounts.

The Commission requests comment on whether the proposed amendments are expected to promote efficiency, competition, and capital formation.

VII. Regulatory Flexibility Act Certification

Section 3(a) of the Regulatory Flexibility Act⁷⁷ requires the Commission to undertake an initial regulatory flexibility analysis of the effects of proposed rules and rule amendments on small entities, unless

⁷⁶ 15 U.S.C. 78w(a)(2).

⁷⁷ 5 U.S.C. 603(a).

⁷⁵ 15 U.S.C. 78c(f).

the Chairman certifies that the rules and rule amendments, if adopted, would not have a significant economic impact on a substantial number of small entities.⁷⁸

The proposed amendments to Rule 10b-10 and proposed Rule 11d2-1 would apply only to broker-dealers that plan to effect security futures product transactions in futures accounts for the benefit of customers. The Commission's Office of Economic Analysis has determined that as of March 31, 2001, 90 broker-dealers were also registered with the CFTC as FCMs. None of those broker-dealers is a small entity.⁷⁹ There are also 1,399 entities (which includes FCMs and introducing brokers) that may be eligible to be registered as Notice BDs.⁸⁰ The CFTC has determined that FCMs are not small entities for the purposes of the RFA.⁸¹ In addition, the CFTC has stated that it would evaluate within the context of a particular rule proposal whether some or all of affected introducing brokers would be considered to be small entities and, if so, what economic impact that rule would have on them.⁸²

Under the CFMA, all Notice BDs and Full FCM/Full BDs, regardless of size, that effect SFP transactions in futures accounts must comply with Rule 10b-10, and all Full FCM/Full BDs effecting SFP transactions in futures accounts must comply with the disclosure requirements of Section 11. These disclosure requirements are in addition to the disclosures required under the CEA. The proposed amendments to Rule 10b-10 would conditionally exclude the affected firms from the general disclosure requirements of Rule 10b-10. Proposed Rule 11d2-1 would exempt affected Full FCM/Full BDs from the disclosure requirements of Section 11. Accordingly, all Notice BDs and Full FCM/Full BDs effecting SFP transactions in futures accounts would be able to send confirmations that are substantially similar to those confirmations they already provide to their customers for other futures transactions. Thus, the proposed amendments to Rule 10b-10 and proposed Rule 11d2-1, if adopted, would actually reduce the burden these entities face in meeting the disclosure requirements of both the Exchange Act and the CEA. Accordingly, we do not believe that the proposed amendments

to Exchange Act Rule 10b-10 and proposed Rule 11d2-1 would have a significant economic impact on a substantial number of small entities.

The Chairman has certified that the proposed rules and amendments, if adopted, would not have a significant economic impact on a substantial number of small entities. A copy of the certification is attached as Appendix A.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is also requesting information regarding the potential impact of the proposed rules and rule amendments on the economy on an annual basis. Commenters should provide empirical data to support their views.

VIII. Statutory Authority

The Commission is proposing amendments to Rule 10b-10 and proposing new Rule 11d2-1 under the Exchange Act pursuant to the authority conferred by the Exchange Act, including Sections 10, 11, 17, 23(a), and 36(a)(1).⁸³

Text of Proposed Rule Amendments and Rule

List of Subjects in 17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, the Securities and Exchange Commission hereby proposes that Title 17, Chapter II, of the Code of Federal Regulation be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

* * * * *

2. Section 240.10b-10 is amended by removing the authority citation following § 240.10b-10, redesignating paragraph (e) as paragraph (f), and adding new paragraph (e) to read as follows:

§ 240.10b-10 Confirmation of transactions.

* * * * *

(e) *Security futures products.* The provisions of paragraphs (a) and (b) of this section shall not apply to a broker

⁸³ 15 U.S.C. 78j, 78k, 78q, 78w(a), and 78mm(a)(1).

or dealer registered pursuant to section 15(b)(11)(A) of the Act (15 U.S.C. 78o(b)(11)(A)) to the extent that it effects transactions for customers in security futures products in a futures account (as that term is defined in § 240.15c3-3(a)(15)) and a broker or dealer registered pursuant to section 15(b)(1) of the Act (15 U.S.C. 78o(b)(1)) that is also a futures commission merchant registered pursuant to section 4f(a)(1) of the Commodity Exchange Act (7 U.S.C. 6f(a)(1)), to the extent that it effects transactions for customers in security futures products in a futures account (as that term is defined in § 240.15c3-3(a)(15)), *Provided* that:

(1) The broker or dealer that effects any transaction for a customer in security futures products in a futures account gives or sends to the customer no later than the next business day after execution of any futures securities product transaction, written notification disclosing:

(i) The date the transaction was executed, the identity of the single security or narrow-based security index underlying the contract for the security futures product, the number of shares or units (or principal amount) of such security futures product purchased or sold, the price, and the delivery month;

(ii) The source and amount of any remuneration received or to be received by the broker or dealer in connection with the transaction, including, but not limited to, markups, commissions, costs, fees, and other charges incurred in connection with the transaction;

(iii) The fact that information about the time of the execution of the transaction, the identity of the other party to the contract, and whether the broker or dealer is acting as agent for such customer, as agent for some other person, as agent for both such customer and some other person, or as principal for its own account, and if the broker or dealer is acting as principal, whether it is engaging in a block transaction or an exchange of security futures products for physical securities, will be available upon written request of the customer; and

(iv) Whether payment for order flow is received by the broker or dealer for such transactions and the fact that the source and nature of the compensation received in connection with the particular transaction will be furnished upon written request of the customer.

(2) *Transitional provision.* (i) Broker-dealers are not required to comply with paragraph (e)(1)(iii) of this section until June 1, 2003, *Provided* that, if the broker-dealer receives a written request from a customer for the information paragraph (e)(1)(iii) of this section

⁷⁸ 5 U.S.C. 605(b).

⁷⁹ See 17 CFR § 240.0-10.

⁸⁰ See Exchange Act Release No. 44730 (August 21, 2001), 66 FR 45137 (August 27, 2001).

⁸¹ *Policy Statement and Establishment of Definitions of "Small Entities" for Purposes of the Regulatory Flexibility Act*, 47 FR 18618 (April 30, 1982).

⁸² *Id.*

requires the broker-dealer to disclose upon a customer's written request, the broker-dealer makes the information available to the customer; and

(ii) Broker-dealers are not required to comply with paragraph (e)(1)(iv) of this section until June 1, 2003.

* * * * *

3. Section 240.11d2-1 is added to read as follows:

§ 240.11d2-1 Exemption from Section 11(d)(2) for certain broker-dealers effecting transactions for customers security futures products in futures accounts.

A broker or dealer registered pursuant to section 15(b)(1) of the Act (15 U.S.C. 78o(b)(1)) that is also a futures commission merchant registered pursuant to section 4f(a)(1) of the Commodity Exchange Act (7 U.S.C. 6f(a)(1)), to the extent that it effects transactions for customers in security futures products in a futures account (as that term is defined in § 240.15c3-3(a)(15)), is exempt from section 11(d)(2) of the Act (15 U.S.C. 78k(d)(2)).

By the Commission.

Dated: May 31, 2002.

Jill M. Peterson,
Assistant Secretary.

Appendix A

Note: Appendix A to the Preamble will not appear in the Code of Federal Regulations.

Regulatory Flexibility Act Certification

I, Harvey L. Pitt, Chairman of the Securities and Exchange Commission (the "Commission"), based on the representations of the Division of Market Regulation provided to me, and the analysis of the Office of Economic Analysis and the Office of the General Counsel provided to me, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendments to Rule 10b-10 and proposed new Rule 11d2-1 would not, if adopted, have a significant economic impact on a substantial number of small entities.

Dated: May 31, 2002.

Harvey L. Pitt,
Chairman.

[FR Doc. 02-14294 Filed 6-7-02; 8:45 am]

BILLING CODE 8010-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 207-0336b; FRL-7224-2]

Revisions to the California State Implementation Plan, Great Basin Unified Air Pollution Control District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Great Basin Unified Air Pollution Control District (GBUAPCD) portion and the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern the emission of particulate matter (PM-10) from GBAPCD open burning/open detonation (OB/OD) of propellants, explosives, and pyrotechnics (PEP); from SCAQMD storage, handling, and transport of coke, coal, and sulfur; and from SCAQMD paved and unpaved roads and livestock operations. We are proposing to approve local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by July 10, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions and TSDs at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington DC 20460.
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.
Great Basin Unified Air Pollution Control District, 157 Short Street, Bishop, CA 93514.
South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX; (415) 947-4118.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local

GBUAPCD Rule 432 and SCAQMD Rules 1158 and 1186. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: May 9, 2002.

Alexis Strauss,

Acting Regional Administrator, Region IX.
[FR Doc. 02-14208 Filed 6-7-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP NO. SD-001-0012b; FRL-7216-2]

Approval of an Air Quality Implementation Plan Revision; South Dakota; Rapid City Street Sanding Regulations To Protect the National Ambient Air Quality Standards for PM-10

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is taking direct final action to approve a State Implementation Plan (SIP) revision submitted by the State of South Dakota for the purpose of establishing street sanding, deicing and maintenance rules for Rapid City, South Dakota. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any

parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Comments must be received in writing on or before July 10, 2002.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the State documents relevant to this action are available for public inspection at the South Dakota Department of Environmental and Natural Resources, Air Quality Program, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501.

FOR FURTHER INFORMATION CONTACT: Mark Komp, EPA, Region VIII, (303) 312-6022.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

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

Dated: May 13, 2002.
Robert E. Roberts,
Regional Administrator, Region VIII.
 [FR Doc. 02-14367 Filed 6-7-02; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52
[CA255-0333; FRL-7228-1]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).
ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern visible emissions (VE) from many different sources of air pollution. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATE: Any comments must arrive by July 10, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901. You can inspect copies of the submitted SIP revisions and EPA's

technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814; and, San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX, (415) 947-4111.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by SJVUAPCD and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	4101	Visible Emissions	11/15/01	12/06/01

On January 22, 2002, EPA found Rule 4101 met the completeness criteria in 40 CFR part 51 appendix V. These criteria must be met before formal EPA review may begin.

B. Are There Other Versions of This Rule?

EPA has received two prior versions of Rule 4101. SJVUAPCD adopted the first version on December 17, 1992 and CARB submitted this rule to EPA on September 28, 1994. SJVUAPCD adopted the second version on June 21, 2001 and CARB submitted the rule on October 30, 2001. EPA has not acted on these versions of the rule. While we can

act on only the most recently submitted version listed in Table 1, we have reviewed materials provided with these previous submittals.

C. What Is the Purpose of the Submitted Rule?

Rule 4101 limits the emissions of visible air contaminants of any type; usually, but not always particulate matter from combustion sources and industrial sites. Specifically, the rule prohibits emissions beyond a defined opacity standard. Administratively, Rule 4101 replaces the individual county-level visible emissions rules now in the SIP. The TSD has more

information about Rule 4101 and the county-level rules it replaces.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must meet Reasonably Available Control Measure (RACM) requirements for nonattainment areas (see section 189), and must not relax existing requirements (see sections 110 (1) and 193). The SJVUAPCD regulates a PM nonattainment area (see 40 CFR part 81), so Rule 4101 must fulfill RACM.

Guidance and policy documents that we used to help evaluate enforceability and RACM requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to appendix D of November 24, 1987 **Federal Register** Notice," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

B. Does the Rule Meet the Evaluation Criteria?

We believe Rule 4101 is consistent with the relevant policy and guidance regarding enforceability, RACM, and SIP relaxations. Prior SJVUAPCD constituent county Rules 401, 402, and

403 are now consolidated within a single rule format. The cumulative effect of the changes to these rules through the creation and amendment of Rule 4101 does not weaken the pre-existing county-level rules' emission limits. The 20% opacity limit is retained, limited exemptions are added, and an exemption is removed. The TSD has more specific information on our evaluation.

C. EPA Recommendations To Further Improve the Rule

We have no recommendations at this time.

D. Public Comment and Final Action

Because EPA believes the submitted rule fulfills all relevant requirements, we are proposing to fully approve it as described in section 110(k)(3) of the Act.

We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate this rule into the federally enforceable SIP.

III. Background Information

A. Why Was This Rule Submitted?

Visible emission rules with their opacity standards are basic components of an air quality regulation program and a general RACM requirement for PM-10 regulations. Section 110(a) of the CAA requires states to submit regulations that control VE emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VE rules.

TABLE 2.—PM-10 NONATTAINMENT MILESTONES

Date	Event
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q.
December 10, 1993	Section 189(a)(1)(C) requires that PM-10 nonattainment areas implement all reasonably available control measures (RACM) by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed 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 proposed 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 proposed 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 proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and

Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve 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 proposed 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. 22 note) do not apply. This proposed 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 52

Environmental protection, Air pollution control, Nitrous Oxide, Hydrocarbons, Particulate Matter, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compound.

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

Dated: May 2, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.
[FR Doc. 02-14496 Filed 6-7-02; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 61 and 63**

[FRL-7223-4]

Approval of the Clean Air Act, Section 112(l), Delegation of Authority to the Oregon Department of Environmental Quality and Lane Regional Air Pollution Authority**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: The Environmental Protection Agency, Region 10 (EPA) is proposing to approve the Oregon Department of Environmental Quality's (ODEQ) request, on behalf of itself and the Lane Regional Air Pollution Control Authority (LRAPA), program approval and delegation of authority to implement and enforce certain National Emission Standards for Hazardous Air Pollutants (NESHAPs).

Pursuant to the authority of section 112(l) of the Act, this proposed approval is based on EPA's finding that state law, regulations, and agency resources meet the requirements for program approval and delegation of authority specified in regulations pertaining to the criteria for delegation common to all approval options, and in applicable EPA guidance (see 40 CFR 60.91).

This delegation would acknowledge ODEQ and LRAPA's ability to implement a NESHAP program and to transfer primary implementation and enforcement responsibility from EPA to ODEQ and LRAPA. Although EPA would look to ODEQ and LRAPA as the leads for implementing the delegated NESHAPs in their respective jurisdictions, EPA retains authority under section 113 of the Act to enforce any applicable emission standard or requirement, if needed.

In the Final Rules section of this **Federal Register**, the EPA is publishing its approval as a direct final rule without prior proposal because the Agency views this as a non-controversial determination and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated.

If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any

parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before July 10, 2002.

ADDRESSES: Written comments should be submitted to Jeff KenKnight, Manager, Federal and Delegated Air Programs Unit, Office of Air Quality (OAQ-107), U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553-6641.

Copies of delegation requests and other supporting documentation are available for public inspection during normal business hours at the U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Jeff KenKnight, Manager, Federal and Delegated Air Programs Unit, Office of Air Quality (OAQ-107), U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553-6641.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: May 24, 2002.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

[FR Doc. 02-13975 Filed 6-7-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 62**

[ME 067-7016b; FRL-7226-9]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Maine; Negative Declaration**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: EPA proposes to approve the sections 111(d)/129 negative declaration submitted by the Maine Department of Environmental Protection (DEP) on January 24, 2002. This negative declaration adequately certifies that there are no existing commercial and industrial solid waste incineration units (CISWIs) located within the boundaries of the state of Maine.

DATES: EPA must receive comments in writing by July 10, 2002.

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

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

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

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

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

Dated: May 16, 2002,

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 02-14488 Filed 6-7-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL-7223-6]

Clean Air Act Approval of Revisions to Operating Permits Program in Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve, as a revision to Oregon's title V air operating permits program, a 1999 statute addressing the State's requirements for judicial standing to challenge State-issued title V permits. In a Notice of Deficiency published on November 30, 1998 (63 FR 65783), EPA notified Oregon of EPA's finding that the State's requirements for judicial standing did not meet minimum Federal requirements for program approval. This program revision would resolve the deficiency identified in the Notice of Deficiency. EPA is also proposing to approve, as a revision to Oregon's title V air operating permits program, changes to Oregon's title V regulations made in 1999 that reorganize and renumber the regulations and increase title V fees.

In the Final Rules section of this **Federal Register**, the EPA is publishing its approval as a direct final rule without prior proposal because the Agency views this as a non-controversial determination and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated.

If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before July 10, 2002.

ADDRESSES: Written comments should be mailed to Denise Baker, Environmental Protection Specialist, Office of Air Quality, Mailcode OAQ-

107, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Copies of Oregon's submittal, and other supporting information used in developing this action, are available for inspection during normal business hours at the U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT:

Denise Baker, Office of Air Quality, Mailcode, OAQ-107, U.S.

Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553-8087.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: May 22, 2002.

Elbert Moore,

Acting Regional Administrator, Region 10.

[FR Doc. 02-13973 Filed 6-7-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[F-2001-RDMP-FFFFF; FRL-7228-3]

RIN 2050-AE92

Research, Development, and Demonstration Permits for Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to add a new section to the Criteria for Municipal Solid Waste Landfills (MSWLF) to allow states to issue research, development, and demonstration (RD&D) permits for landfill operations at variance with some parts of the MSWLF criteria, provided landfill operators demonstrate that these operations will not result in an increased risk to human health and the environment. EPA is proposing this alternative to promote innovative technologies for the landfilling of municipal solid waste. Variance from the following MSWLF criteria would not be allowed: location restrictions, ground water monitoring, corrective action requirements, the financial assurance criteria, procedures for

excluding hazardous waste, and explosive gases control requirements.

DATES: EPA must receive your comments or your comments must be postmarked by August 9, 2002.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F-2002-RDMP-FFFFF to: (1) if using regular US Postal Service mail: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460-0002, or (2) if using special delivery, such as overnight express service: RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. Commenters are encouraged to submit their comments electronically through the Internet to: rcradocket@epa.gov. Comments in electronic format should also be identified by the docket number F-2002-RDMP-FFFFF. You must provide your electronic submittals as ASCII files and avoid the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460-0002.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703 603-9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost \$0.15/page. The index and some supporting materials are available electronically. See the "Supplementary Information" section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800 424-9346 or TDD 800 553-7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703 412-9810 or TDD 703 412-3323.

For information on specific aspects of this document: contact Dwight Hlustick, Municipal and Industrial Solid Waste Division of the Office of Solid Waste

(mail code 5306W), U.S. Environmental Protection Agency Headquarters (EPA, HQ), Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, D.C. 20460; 703/308-8647, hlustick.dwight@epa.gov.

SUPPLEMENTARY INFORMATION:

Supporting Materials, and Official Record

The index and the following supporting materials are available on the Internet: "Finding a Better Cover," Stephen F. Dwyer, *Civil Engineering*, January 2001, pages 58-63; "USEPA Workshop for Bioreactor Landfills, September 6-7, 2000," U.S. EPA, September 2001; "Prediction and Measurement of Leachate Head on Landfill Liners," Debra R. Reinhart, Florida Center for Solid and Hazardous Waste Management, Report #98-3, July 1998; "Technical Resource Document: Assessment and Recommendations for Improving the Performance of Waste Containment Systems," EPA, Office of Research and Development, Grant # CR-821448-01-0, February 2002, (R. Bonaparte, D. Daniel, and R. M. Koerner). You can find these materials at: <http://www.epa.gov/epaoswer/non-hw/muncpl/mswlficr/index.htm>.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register** or in a response to comments document placed in the official record for this rulemaking. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

Affected Entities.

Entities potentially affected by this action are public or private owners or operators of landfills. Affected categories and entities include the following:

Category	Examples of affected entities
Federal Government.	Agencies procuring waste services
Industry	Owners or operators of municipal solid waste landfills

Category	Examples of affected entities
Municipalities, including Tribal Governments.	Owners or operators of municipal solid waste landfills

This table is a guide for readers that describes which entities are likely to be affected by this action. It lists the types of entities that EPA is aware could potentially be impacted by today's action. It is possible that other types of entities not listed in the table could also be affected. To determine whether you would be impacted by this action, you should carefully examine the applicability criteria. If you have questions about whether this action applies to a particular facility, please consult Mr. Dwight Hlustick, U. S. Environmental Protection Agency, Office of Solid Waste (5306W), 1200 Pennsylvania Ave., SW., Washington, DC 20460, 703 308-8647, hlustick.dwight@epamail.epa.gov.

Outline

- I. Authority for this Proposed Rule
- II. EPA's Role in Developing Municipal Solid Waste Landfill Criteria
- III. Proposed Research, Development, and Demonstration Permits
 - A. Duration of RD&D Permit
 - B. Size Limitations
 - C. Testing, Monitoring, and Reporting Requirements
- IV. State and Tribal Implementation
- V. Applicable statutes and executive orders
 - A. Executive Order 12866 (Regulatory Planning and Review)
 - B. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 et. seq.
 - C. Unfunded Mandates Reform Act
 - D. Paperwork Reduction Act
 - E. Executive Order 13132 (Federalism)
 - F. Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)
 - G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
 - H. National Technology Transfer and Advancement Act of 1995
 - I. Executive Order 12898: Environmental Justice
 - J. Executive Order 13211: Energy Effects

I. Legal Authority for This Proposed Rule

The authority for this proposed revision to the Criteria for Municipal Solid Waste Landfills (40 CFR part 258) is sections 1008, 2002(a), 4004, 4005(c) and 4010 of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6907, 6912(a), 6944, 6945(c), 6949a.

II. EPA's Role in Developing Municipal Solid Waste Landfill Criteria

Subtitle D of the Resource Conservation and Recovery Act (RCRA) provides that states will have the primary authority for regulating municipal solid waste. The role of the federal government is to establish an overall regulatory direction through the development of minimum national standards for nonhazardous solid waste disposal facilities, which include municipal solid waste landfills (MSWLFs). On October 9, 1991, EPA issued revised Criteria for Municipal Solid Waste Landfills (56 FR 50978). These criteria, codified in 40 CFR part 258, establish minimum national standards to ensure that "no reasonable probability of adverse effects on health or the environment" will result from solid waste disposal facilities receiving hazardous household waste and small quantity generator hazardous wastes (56 FR 50979). Today, EPA is proposing an amendment to the MSWLF criteria to allow for the issuance of limited permits for research, development, and demonstration projects. States with permit programs determined to be adequate pursuant to RCRA section 4005(c) and 40 CFR part 239 ("approved States") would decide whether or not to adopt this provision in their approved programs.

III. Research, Development, and Demonstration Permits

Today's proposed rule would allow the Director of an approved State to issue research, development, and demonstration (RD&D) permits to owners and operators of municipal solid waste landfills. The Director of a non-approved State would not have the option of issuing RD&D permits. EPA is proposing this provision to stimulate the development of new technologies and alternative operational processes for the landfilling of municipal solid waste. This proposed rule would allow the State director to waive specific provisions of the MSWLF criteria, including the (1) operating criteria, except procedures for excluding hazardous waste and explosive gas control in subpart C; (2) the design criteria in subpart D; and (3) the closure and post-closure care criteria in subpart F. In order to issue an RD&D permit waiving any of these criteria, the State Director must be satisfied that a landfill operating under an RD&D permit will pose no additional risk to human health and the environment beyond that which would result from a landfill operating under the current MSWLF criteria. Today's proposed rule is modeled on

the research, development, and demonstration permit provisions in 40 CFR 270.65. That provision allows states with approved hazardous waste management programs to issue RD&D permits for innovative and experimental treatment technologies or processes at hazardous waste treatment facilities.

The permit variance proposed today is similar to that already allowed by some States which have more restrictive or stringent standards than those established in the 1991 MSWLF criteria. However, under the present federal standards set forth in the criteria, these state research permits are very limited in their scope, i.e., state rules cannot be less stringent than the MSWLF criteria. Today's proposed rule would allow more latitude in these existing state programs as well as allowing the development of new programs in other States.

EPA is proposing to allow permits for alternative design and operating requirements because EPA has become aware of new or improved technologies for landfill operations and design since the promulgation of the MSWLF criteria in 1991. These include: (1) Improvements in liner system design and materials; (2) improvements in the design of, and materials used in leachate drainage and recirculation systems; (3) new processes for more rapid degradation of waste which require the addition of water or steam; (4) new liquid distribution techniques (see EPA Docket Number F-2000-ALPA-FFFFF for FR Notice: Alternative Liner Performance, Leachate Recirculation, and Bioreactor Landfills: Request for Information and Data, April 6, 2000, FR18014); and (5) improvements in various monitoring devices (i.e., "Prediction and Measurement of Leachate Head on Landfill Liners," Debra R. Reinhart, Florida Center for Solid and Hazardous Waste Management, Report #98-3, July 1998). As a result, the approved States would have flexibility in allowing the operation of new and innovative technologies in permitting the landfilling of municipal solid waste. The State and the owner/operator must assure there is no increased risk to human health and the environment when instituting any of the new techniques or processes which would be allowed by today's proposed rule changes.

EPA has determined that in order to ensure that human health and the environment are protected, specific criteria developed for municipal solid waste landfills should not be able to be waived. Therefore, today's proposed rule would not allow State directors to

deviate from the requirements addressing: (1) Location restrictions in subpart B; (2) ground-water monitoring and corrective action in subpart E; (3) financial assurance in subpart G; (4) explosive gases control in 40 CFR 258.23 of subpart C; and (5) hazardous waste control in 40 CFR 258.20 of subpart C. EPA believes that these provisions are necessary to assure a national minimum level of protection by requiring (1) landfills to be properly located safe distances from airports, outside of wetlands, and floodplains; (2) ground-water to be adequately monitored and corrective action measures to be implemented, if needed; (3) adequate financial safeguards to be in place for closure and post-closure action; (4) explosive gases to be monitored and controlled; and (5) procedures to be in place to prevent the dumping of regulated quantities of hazardous waste in MSW landfills.

An example of a modification to the operation of an MSWLF that would be allowed to be issued under an RD&D permit would be the addition of non-hazardous liquids to accelerate decomposition in a MSWLF unit constructed with an alternative liner (i.e., a liner that complies with the performance design criteria in 40 CFR 258.40(a)(1) rather than a liner that complies with the design specifications in 40 CFR 258.40(a)(2)). This practice is not allowed under the existing municipal landfill criteria. Today's proposed rule would grant State Directors in approved States the authority to issue permits allowing for the addition of these liquids, provided the owner/operator demonstrates that there will be no increased risk to human health and the environment. The MSWLF owner/operator would therefore be required to demonstrate groundwater protection, landfill stability, as well as earlier landfill gas collection and control sooner than is currently required under EPA air regulations (40 CFR part 60, subparts CC and WWW). The plan for landfill gas control would need to be included as a requirement in the RD&D permit.

Another example of a variance for which an RD&D permit could be issued is use of an alternate landfill cover rather than that which is specified in the MSWLF criteria. Although the current regulations provide approved States with flexibility regarding covers for landfills, this proposed rule would allow State directors in approved States additional flexibility, while maintaining the assurance that human health and the environment are protected. EPA believes that flexibility is warranted due to varying climates, topography, and

waste handling techniques in approved States. However with additional flexibility, there is the need to more closely monitor the operations of those landfills that have been issued RD&D permits.

EPA has also considered the applicability of this proposed rule to owners/operators of small landfills that are exempt from part 258 subparts D and E as specified in 40 CFR 258.1(f). EPA concluded that these small landfills should also be allowed to apply and receive RD&D permits under today's rule for the following reason: EPA is proposing to allow this because permits will be issued on a site-specific basis and the State Director has the authority to modify or eliminate the above exemptions as is needed to protect human health and the environment. Therefore, the exemptions for these facilities would remain applicable if the owner/operator applies for a permit under today's proposal, unless the State Director determines otherwise.

EPA is not proposing a process or methodology for obtaining an RD&D permit, but is leaving permit application and issuance procedures up to the States wishing to issue these permits. EPA will work with interested States in developing these procedures and will issue guidance if we determine that there is sufficient interest and need for such guidance.

A. Duration of RD&D Permits

Today's proposed rule would limit the duration of initial RD&D permits to three years. EPA believes that three years is an appropriate length of time to initially test and assess the performance of an innovative technology or process in an MSWLF. Similar to the RD&D permit provision for hazardous waste treatment facilities, this rule would allow the permit to be renewed for three years up to three times. Therefore, this proposal would allow for a maximum permit period of 12 years. While this is a relatively short time in the life of a landfill and a longer time may be needed for some projects, EPA believes that this is sufficient time to determine whether a project will be successful in meeting its stated goals. If a project proves successful and the owner/operator and State agree that it should continue longer than 12 years, EPA may develop a site-specific rule or other appropriate regulatory modification to the MSWLF criteria. EPA requests comment on whether three years is an appropriate permit duration and whether three permit renewals for a total project duration of 12 years is also appropriate.

B. Size Limitations

EPA considered placing a size limitation on the RD&D projects to be permitted. This included the area of the landfill, as well as the quantity of waste placed in the landfill. EPA determined that due to the variation in types of projects, limitations based on size of landfill, quantity of waste, or other limitations should be determined by the State Director on a site-specific basis. Therefore, EPA is not proposing to establish any limitations based on size or waste quantity, but rather, recommends that the Directors of approved States consider whether size or capacity limitations are warranted, based on the project goals, in order to protect the environment and human health and stay within the maximum duration of the RD&D permit. However, EPA requests comment on whether there should be any limitations on the size of the landfill or quantity of waste placed in the landfill.

C. Testing, Monitoring, and Reporting Requirements

To ensure that projects operating under an RD&D permit meet the expectations of the research, development, or demonstration project, EPA is also proposing to require that the permittee test, monitor, and submit information to the State Director as specified in the RD&D permit in order for the Director to determine the progress of the project, insure proper operation of the landfill, and assure protection of human health and the environment. EPA is not proposing particular monitoring testing, or recordkeeping requirements, nor does the proposal specify monitoring frequency. The Agency believes that each project should be evaluated individually to determine the appropriate monitoring, testing, and records to be kept, as well as to determine how often such monitoring or testing should take place. Therefore, under the proposed rule, the State Director would make this assessment and include specific monitoring, testing, and recordkeeping requirements in each permit. Similarly, EPA is proposing that the State Director specify the reporting requirements in the permit on a site-specific basis.

As a separate requirement, the proposed rule would require the landfill owner/operator to submit an annual report to the State Director summarizing progress on how well the project is attaining its goals. Examples of goals include environmental protection, cost benefits, community benefits, compost recovery, improved ground water

protection, more rapid and/or complete decomposition of waste, improved landfill gas recovery. These goals should be clearly stated in the permit in objective, measurable terms where possible. EPA specifically requests comments on whether these monitoring and reporting requirements are appropriate.

IV. State and Tribal Implementation

The municipal solid waste landfill criteria are implemented in one of two ways. The first, and preferred alternative, is that each State implements the criteria after EPA reviews its municipal solid waste landfill permit program or other system of prior approval and finds it to be adequate pursuant to 40 CFR part 239. The criteria contain provisions that allow States to develop and rely on alternative approaches to address site-specific conditions. Therefore, the actual planning and direct implementation of solid waste programs is principally a function of State governments and those owners and operators, including local governments, of MSWLFs, rather than the federal government. The criteria can also be "self-implementing" by landfill owners and operators in those States that have not received EPA approval of their MSWLF permitting programs. In this case, the regulations provide less flexibility for owners and operators. As of January 1, 2002, 49 States and territories had received approval of their programs and are implementing these regulations.

As discussed in a prior Federal Register notice (63 FR 57027, October 23, 1998), Tribes are not included in the definition of State under RCRA, and therefore EPA does not have authority under RCRA to approve tribal MSWLF permitting programs. However, tribes can seek the same flexibility as afforded owners and operators located in approved States through a site-specific rulemaking as discussed in the EPA draft guidance entitled, "Site Specific Flexibility Requests for Municipal Solid Waste Landfills in Indian Country," EPA 530-97-016, August 1997.

Today's proposed rule to allow RD&D permits would not be self implementing. MSWLF owners/operators would only be able to obtain an RD&D permit in approved States that adopt authority to issue such permits. Because today's proposed rule provides more flexibility than existing federal criteria, States would not be required to amend their permit programs which have been determined to be adequate under 40 CFR part 239. States would have the option to amend statutory or

regulatory definitions pursuant to today's proposed rule. If a State chooses to amend its statutory or regulatory authority, and if doing so modifies the State's solid waste permit program, the State would be required to notify the EPA Regional Administrator of the modification as provided by 40 CFR 239.12. Whether a State chooses to incorporate today's proposed rule into its solid waste program would have no effect on its existing status with respect to EPA approval, i.e., State revisions to issue RD&D permits will not open previously approved solid waste programs for Federal review.

Tribes may also receive RD&D permits allowed by today's proposed rule similar to owners and operators located in approved States through a site-specific rulemaking outlined in the previously referenced draft guidance document, "Site Specific Flexibility Requests for Municipal Solid Waste Landfills in Indian Country."

V. How Does This Proposed Rule Comply With Applicable Statutes and Executive Orders?

A. Executive Order 12866 (Regulatory Planning and Review)

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the Agency must determine whether a regulatory action is significant and therefore subject to OMB review and the requirements of the Executive Order. A significant regulatory action is defined by Executive Order 12866 as one 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 rights and obligations or 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 Executive Order 12866. Today's proposed rule would allow, but would not require, States to provide RD&D permits to individual MSWLFs. The proposed rule would not require any MSWLF to apply for such a permit, but would provide an opportunity to those MSWLFs seeking to try innovative or new technology or processes with respect to landfilling municipal solid waste.

It has been determined that today's proposed rule is not a significant regulatory action under Executive Order 12866 and is therefore not subject to OMB review. Today's proposed rule would impose no new requirements and is intended to give more flexibility to the regulated community with significant potential net cost savings. Although net cost savings are expected, EPA is unable to estimate the magnitude of the savings because it is yet to be seen how many RD&D permits will be authorized or what kinds of permit changes or innovations might be undertaken.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) a small business that is primarily engaged in the collection and disposal of refuse in a landfill operation as defined by NAICS codes 562212 and 924110 (also defined by SIC codes 4953 and 9511) with annual receipts less than 10 million dollars, as defined in accordance with the Small Business Administration (SBA) size standards established for industries listed in the North American Industry Classification System (see <http://www.sba.gov/size/NAICS-cover-page.html>); (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.

SBREFA amended the Regulatory Flexibility Act to require Federal Agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities (SISNOSE). The following discussion explains EPA's determination.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action

will not have a significant economic impact on a substantial number of small entities (SISNOSE), since the rule has direct effects only on state agencies. The purpose of this rule is to add flexibility to the MSWLF criteria. This rule would add no new requirements to the MSWLF criteria for either existing or new facilities, nor will it increase costs for new or existing MSWLFs regardless of size. In conclusion, EPA has determined that this rule would not impose significant new burdens on small entities. Instead, this rule is expected to provide net annual benefits (in the form of regulatory relief; potential research, development, and innovation advancements; and long-term benefits) from the voluntary participation by facilities in the private sector.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of alternatives and adopt the least costly, most cost effective or least burdensome alternative that achieves the objective of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising

small governments on compliance with the regulatory requirements.

EPA's analysis of compliance with the Unfunded Mandates Reform Act of 1995 found that this proposed rule imposes no additional enforceable burden on any State, local or tribal governments or the private sector. Thus, today's proposed rule is not subject to the requirements of sections 202, 203, and 205 of UMRA.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document will be prepared by EPA and a copy, when completed, may be obtained from Susan Auby by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by email at auby.susan@epamail.epa.gov, or by calling (202) 260-2740. A copy can also be downloaded off the internet at <http://www.epa.gov/icr> when it is available.

The ICRs affected by this rule are for 40 CFR parts 239, Requirements for State Permit Program Determination of Adequacy and part 258, MSWLF Criteria. EPA has submitted the ICR for part 239 (ICR# 1608.03, OMB# 2050-152) to OMB for review. EPA included estimates of the cost for approved States to revise their existing program for today's rule. The estimated cost was \$5,680 per respondent. EPA is requesting comments from States which plan to make these revisions so that EPA can better understand the expected burden that would be incurred by states who wish to make these changes. EPA is estimating that approximately five states will revise their rules to take advantage of today's proposal. In addition, EPA is also requesting information from MSWLF owners/operators on the reporting burden that they would incur due to this rule under the part 258, MSWLF criteria ICR (ICR# 1381.06, OMB# 2050-0122). Information which States are expected to require include the annual report specified in the rule as well as additional monitoring and testing requirements which may be specified by a State authority. Additional monitoring requirements could include the measurement of leachate head on the liner; landfill temperature at various locations; type, application rate and application method of various wastes including liquid wastes and water that maybe placed in the landfill; additional hydraulic studies; landfill settlement

rate determinations, etc. At present EPA estimates that only two to three landfills a year will be permitted under this proposed rule over the next few years. Reporting requirements are estimated to cost between \$15,000 and \$25,000 per year per landfill. So total reporting costs are estimated at \$30,000 to \$75,000 per year for the first year and increasing at a rate of \$50,000 per year for the next three years thereafter. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2823); 1200 Pennsylvania Avenue, N.W., Washington, DC 20460-0001; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after June 10, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by July 10, 2002. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an

accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Implementation of this proposed rule by a State would be at the State's discretion and would not be required. Nevertheless, although section 6 of Executive Order 13132 does not apply to this rule, EPA has consulted with States through the Association of State and Territorial Solid Waste Management Officials during the development of this proposal. Thus, Executive Order 13132 does not apply to this proposed rule change.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

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

Under section 5(b) of Executive Order 13175, EPA may not issue a regulation that has tribal 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 tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation. Under section 5(c) of Executive Order 13175, EPA may not issue a regulation that has tribal implications and that preempts tribal law, unless the Agency consults with tribal officials early in the process of developing the proposed regulation.

EPA has concluded that this proposed rule would have no new tribal implications. It would not present any additional burden on the tribes, but would allow more flexibility for compliance with the MSWLF criteria. It would neither impose substantial direct compliance costs on tribal governments, nor preempt State law. Thus, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this rule.

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

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it would not affect decisions involving the environmental health or safety risks to children.

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods,

sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide explanations to Congress, through OMB, when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

I. Executive Order 12898: Environmental Justice.

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

The Agency believes that today's proposed rule which would provide for research, development, and demonstration permits for municipal solid waste landfills would not have an adverse environmental or economic impact on any minority or low-income group, or on any other type of affected community since these standards would not significantly affect the location of any solid waste collection facility.

J. Executive Order 13211: Energy Effects

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

List of Subjects in 40 CFR Part 258

Environmental protection, Reporting and recordkeeping requirements, Municipal Landfills, Waste treatment and disposal.

Dated: May 31, 2002.

Christine Todd Whitman,
Administrator.

For the reasons set forth in the preamble, EPA is proposing to amend 40 CFR part 258 as follows:

PART 258—[AMENDED]

1. The authority citation for part 258 continues to read as follows:

Authority: 33 U.S.C.1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c) and 6949a(c).

2. New § 258.4 is added to part 258 to read as follows

§ 258.4 Research, development, and demonstration permits.

(a) The Director of an approved State may issue a research, development, and demonstration permit for a new or existing municipal solid waste landfill for which the owner or operator proposes to utilize innovative and new methods for operation, design, or landfill cover which vary from any of the following criteria:

(1) The operating criteria in subpart C of this part except the procedures for excluding the receipt of hazardous waste in § 258.20 and the explosive gases control requirements in § 258.23;

(2) The design criteria in subpart D of this part; and

(3) The final cover criteria in § 258.60(a) and (b).

(b) Any permit issued under this section must include such terms and conditions as least as protective as the criteria in the part to assure protection of human health and the environment. Such permits shall:

(1) Provide for the construction and operation of such facilities as necessary, for not longer than three years unless renewed as provided in paragraph (c) of this section;

(2) Provide for the receipt by the landfill of only those types and quantities of municipal solid waste and non-hazardous wastes which the State Director deems appropriate for the purposes of determining the efficacy and performance capabilities of the technology or process;

(3) Include such requirements as necessary to protect human health and the environment (including but not limited to, requirements regarding monitoring, design, operation, financial responsibility, closure and post-closure, and remedial action), including such requirements as necessary regarding testing and providing information to the State Director with respect to the operation of the facility;

(4) Require the owner or operator of a landfill permitted under this section to

submit an annual report to the State Director showing whether and to what extent the site is progressing in attaining project goals. The report will also include a summary of all monitoring and testing requirements as well as any other operating information specified by the State Director in the permit; and

(5) Require compliance with the criteria in subpart B (location restrictions), subpart E (ground water monitoring and corrective action), and subpart G (financial assurance) of this part.

(c) The Director of an approved State may order an immediate termination of all operations at the facility at any time he determines that the overall goals of the projects are not being attained, including protection of human health or the environment.

(d) Any permit issued under this section may not be renewed more than three times by the Director of an approved State. Each such renewal shall be for a period of not more than three years.

[FR Doc. 02-14489 Filed 6-7-02; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

Marine Mammals: Incidental Take During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), we, the Fish and Wildlife Service, intend to prepare an EIS to evaluate the effects of authorizing the incidental, unintentional take of small numbers of Florida manatees (*Trichechus manatus latirostris*). Pursuant to the Marine Mammal Protection Act (MMPA), we are currently in the process of developing incidental take regulations for government activities related to the operation of watercraft and watercraft access facilities within the geographic area of the species' range in Florida for a period of not more than five years.

DATES: We will consider comments on the proposed Programmatic Environmental Impact Statement that are received by July 25, 2002.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216.

2. You may hand-deliver written comments to our Jacksonville Field Office, at the above address, or fax your comments to 904/232-2404.

3. You may send comments by electronic mail (e-mail) to fw4_es_jacksonville@fws.gov. For directions on how to submit electronic comment files, see the "Public Comments Solicited" section.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours from 8 a.m. to 4:30 p.m., at the above address.

FOR FURTHER INFORMATION CONTACT:

Peter Benjamin, Assistant Field Supervisor Jacksonville Field Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section), telephone 904/232-2580; or visit our Web site at <http://northflorida.fws.gov>.

SUPPLEMENTARY INFORMATION: Section 104 of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361-1407) (MMPA), sets a general moratorium, with certain exceptions, on the taking and importation of marine mammals and marine mammal products and makes it unlawful for any person to take, possess, transport, purchase, sell, export, or offer to purchase, sell, or export, any marine mammal or marine mammal product unless authorized. Take, as defined by section 3(13) of the MMPA means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

"Harassment" is defined at section 3(18) of the MMPA as any act of pursuit, torment, or annoyance which—(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to migration, breathing, nursing, breeding, feeding, or sheltering (16 U.S.C. 1362). You can find other definitions relevant to our proposed action at 50 CFR 18.27(c).

The MMPA contains exceptions to the moratorium. For example, section 101(a)(5)(A) authorizes the Secretary, upon request by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specified geographical region, to allow the incidental, but not intentional, take

of small numbers of a species or stock of marine mammal if certain findings are made and regulations prescribed. The Secretary must find that the total of such taking during the specified time period (not more than five consecutive years each) will have a negligible impact on the species or stock and will not have an unmitigable impact on the availability of such species or stock for subsistence uses. The regulations implementing the MMPA define "negligible impact" as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 18.27(c)). If such findings are made, we would then establish specific regulations setting forth permissible methods of taking pursuant to such activity, means of effecting the least practicable adverse impact on the species or stock and their habitat, and requirements for monitoring and reporting such taking. We have determined that the subsistence provision requiring a finding that the total taking not have an unmitigable impact on the availability of the species or stock for subsistence uses is not applicable to Florida manatees.

Following promulgation of incidental take regulations, U.S. citizens (including government agencies) could apply for a Letter of Authorization, which, if granted, would authorize incidental take associated with an applicant's activities. Procedures for obtaining a Letter of Authorization are described at 50 CFR 18.27(f).

The largest known human-related cause of manatee deaths is collisions with watercraft. Between 1976 and 1999, watercraft-related deaths increased at an average of 7.2 percent per year. In 2000 and 2001, watercraft-related deaths accounted for 29 percent and 25 percent, respectively. From 1996 to 2001, watercraft-related deaths have been the highest on record, ranging from 54 to 82.

In the State of Florida, County, State, and Federal agencies engage in a variety of activities that may result in the incidental, unintentional take of manatees by watercraft. Many of these activities relate to the use and regulation of watercraft operated in Florida waters accessible to manatees, including: (1) Regulating boater behavior on the water (e.g., speed zones and vessel registration); (2) permitting construction of watercraft access facilities (marinas, docks, boat ramps); (3) funding construction of watercraft access facilities; (4) operating watercraft access facilities; and (5) operating watercraft.

To date, there is no authorization for the incidental, unintentional death, injury, or harassment of manatees caused by these otherwise legal activities.

We engage in, or have the authority to engage in, each of the above five categories of activities; therefore, our activities could result in the incidental, unintentional take of manatees. As such, we have initiated development of incidental take regulations for our own activities related to watercraft in Florida. We have also encouraged other Federal and State agencies involved in these same types of activities to join us in this evaluation in order to develop a more comprehensive rule that could address a broader range of activities that may result in watercraft-related take of manatees.

The Environmental Impact Statement will evaluate the environmental effects of the incidental take regulations, and will evaluate alternatives for structuring and implementing the proposed regulations.

Persons wishing to provide relevant information and comments regarding this activity should submit these to the above address. For information, please contact the individual identified above in the section entitled **FOR FURTHER INFORMATION CONTACT**.

Public Comments Solicited

Interested persons are invited to submit comments regarding our preparation of an EIS related to development of incidental take regulations for manatees in Florida. We welcome any and all suggestions, materials, and recommendations to assist and guide us in this endeavor. Specifically, we are seeking:

- Information on the direct, secondary and cumulative effects of this rulemaking on manatees, manatee habitat, and other aspects of the human environment;
- Suggestions regarding the range of alternatives to be considered in the EIS, including alternatives for structuring the proposed incidental take regulations, and alternatives to incidental take regulations;
- Information regarding the potential social and economic effects of the proposed regulations;
- Information on potential mitigative measures, including technological measures, that would result in the least practicable impact on manatees and their habitat; and,
- Suggested means and measures to report and monitor the effects of incidental take on manatees.

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 name and home address from the EIS record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state

this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or business, and from individuals identifying themselves as representatives or officials of

organizations or businesses, available for public inspection in their entirety.

Dated: May 6, 2002.

Sam D. Hamilton,

Regional Director, Region 4.

[FR Doc. 02-14326 Filed 6-7-02; 8:45 am]

BILLING CODE 4310-55-P

Notices

Federal Register

Vol. 67, No. 111

Monday, June 10, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number: FV-02-336]

United States Standards for Grades of Grapefruit Juice

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; request for public comment.

SUMMARY: The Agricultural Marketing Service (AMS), prior to undertaking research and other work associated with revising an official grade standard, is soliciting comments on the petition to change the United States Standards for Grades of Grapefruit Juice. AMS received a petition from the Indian River Citrus League asking USDA to consider replacing the current Grade "A" minimum standard with content of proposed the Florida Department of Citrus "Gold Standard".

DATES: Comments must be submitted on or before August 9, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice. Comments must be sent to Karen L. Kaufman, Standardization Section, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 0709, South Building; STOP 0247, Washington, DC 20250; Fax (202) 690-1527, e-mail Karen.Kaufman@usda.gov. The United States Standards for Grades of Grapefruit Juice is available either through the address cited above or by accessing the AMS Home Page on the Internet at <http://www.ams.usda.gov/fv/ppb.html>.

SUPPLEMENTARY INFORMATION:

Background

AMS received a petition from Indian River Citrus League requesting the

revision of the United States Standards for Grades of Grapefruit Juice. The standards are established under the authority of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627). The petitioner represents growers on Florida's East Coast, along the Indian River called the Indian River District. Only grapefruit grown in this area can be labeled 'Indian River Grapefruit'.

The petitioner is requesting that USDA replace the current Grade "A" minimum standards with the content of the "Gold Standard" as proposed by the Florida Department of Citrus. The "Gold Standard" proposes that grapefruit juice have the following analytical requirements: Brix: minimum 9.5°, and a maximum 10.7°; Acid: minimum 0.85, maximum 1.20; Brix/Acid Ratio: minimum 9.0:1, maximum 11.0:1; and Limonin (ppm): minimum 3.5, maximum 5.5; Naringin (ppm) minimum 300, maximum 650.

The standard for grapefruit (unsweetened) juice is based on score points for Grade "A" and "B". The quality factors scored are for color, defects and flavor. Analytical factors for Grade "A" Brix: minimum 9.0°; Brix/Acid ratio: minimum 8.0:1, maximum 14.0:1; free and suspended pulp (percent by volume): maximum 10 and recoverable oil (percent by volume): .020.

The petitioner believes changing the standard will improve the quality of grapefruit juice produced, therefore increasing overall consumption.

Agricultural Marketing Service

Prior to undertaking detailed work to develop a proposed revised standard AMS is soliciting for comment on the petition submitted by the Indian River Citrus League to change the standard for Grades of Grapefruit Juice. In particular, AMS would welcome comments and information regarding the likely utility of a new grade standard for grapefruit juice and the probable impact on consumers, processors, and growers.

This notice provides for a 60 day comment period for interested parties to comment on changes to the standard. Should AMS conclude that there is a substantial interest in the proposal, the Agency will develop a proposed new standard that will be published in the **Federal Register** with a request for comments in accordance with 7 CFR Part 36.

Dated: June 4, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02-14454 Filed 6-7-02; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: This notice announces a public comment period on the information collection requests (ICRs) associated with crop insurance policies administered by Federal Crop Insurance Corporation (FCIC).

DATES: Written comments on this notice will be accepted until close of business August 9, 2002.

ADDRESSES: Interested persons are invited to submit written comments to Timothy Hoffmann, Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133. Comments titled "Information Collection OMB 0563-0057" may be sent via the Internet to: DirectorPDD@rm.fcic.usda.gov

FOR FURTHER INFORMATION CONTACT:

Louise Narber, Risk Management Specialist, Federal Crop Insurance Corporation, at the address listed above, telephone (641) 535-6025.

SUPPLEMENTARY INFORMATION:

Title: New Crop Insurance Programs (Pilot and Private Crop Insurance Policies).

OMB Number: 0563-0057.

Expiration Date of Approval: April 30, 2003.

Type of Request: Extension of a currently approved information collection.

Abstract: FCIC is proposing to renew the currently approved information collection, OMB Number 0563-0057. It is currently up for renewal and extension for three years. FCIC is

conducting a thorough review of information collections associated with its crop insurance policies under this collection. The information collection requirements for this renewal package are necessary for administering the crop insurance program. Producers are required to report specific data when they apply for crop insurance and report acreage, yields and notices of loss. Insurance companies accept applications, issue policies, establish and provide insurance coverage, compute liability, premium, subsidies, and losses, indemnify producers, and report specific data to FCIC, as required. Insurance agents market crop insurance and service the producer. This data is used to administer the Federal crop insurance program in accordance with the Federal Crop Insurance Act, as amended.

We are asking the Office of Management and Budget (OMB) to extend its approval of our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public concerning this information collection activity. These comments will help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

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

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.4 hours per response.

Respondents/Affected Entities: Parties affected by the information collection requirements included in this Notice are producers and insurance companies reinsured by FCIC, including their agents.

Estimated annual number of respondents: 14,496.

Estimated annual number of responses per respondent: 2.3.

Estimated annual number of responses: 33,343.

Estimated total annual burden hours on respondents: 13,113.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed in Washington, DC, on May 31, 2002.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 02-14407 Filed 6-7-02; 8:45 am]

BILLING CODE 3410-08-P

DEPARTMENT OF AGRICULTURE

Risk Management Agency

Notice of Intent To Seek Approval To Conduct an Information Collection

AGENCY: Risk Management Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Risk Management Agency to request approval for information collections in support of the agency's mission to improve the economic stability of agriculture through a sound system of crop insurance. Approval will be requested for generic information collection projects.

DATES: Written comments on this notice will be accepted until close of business, August 9, 2002.

ADDRESSES: Interested persons are invited to submit written comments to Virginia Guzman, United States Department of Agriculture (USDA), Research and Evaluation Division, Federal Crop Insurance Corporation, Risk Management Agency, 6501 Beacon Drive, Mail Stop 813, Kansas City, MO 64133. Written comments may also be submitted electronically to: RMARED_PRA@rm.fcic.usda.gov.

FOR FURTHER INFORMATION CONTACT: Virginia Guzman or David Fulk, at the Kansas City, MO address listed above, telephone (816) 926-6343.

SUPPLEMENTARY INFORMATION:

Title: Agricultural Risk Management, Research and Evaluation, Generic Information Collections.

OMB Number: 0563-NEW.

Type of Request: New Information Collection.

Abstract: The Risk Management Agency intends to seek information in order to fulfill its mission to improve the economic stability of agriculture through a sound system of crop insurance. The Risk Management Agency requires input from agricultural

producers, producer groups, academia and the insurance industry in order to maintain and expand existing crop insurance products, develop new risk management tools, conduct research into a variety of risk management issues and to evaluate the progress of research projects. The information collections will include: the utilization of written requests for information; questionnaires or surveys; listening sessions or focus groups; requests for applications and status reports. Information collections are necessary to provide input and data on the performance of existing risk management products, to access the risk management needs of agricultural producers, to access the feasibility of new risk management products and tools, to obtain the information necessary for the development of partnership agreements and to obtain information on the status of research agreements and projects. We are asking the Office of Management and Budget (OMB) to approve this information collection activity for 3 years.

The purpose of this notice is to solicit comments from the public concerning the information collection activities. These comments will help us:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection information;

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

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

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 48 minutes per response for a total burden of 15,107 hours.

Respondents/Affected Entities: Individuals and businesses involved in the production of agricultural production and livestock; individuals and businesses in the crop insurance industry; academia, including individuals or representatives of universities and colleges who are involved in research and issues of American agriculture and risk management.

Estimated annual number of respondents: 18,884.

Estimated annual number of responses: 18,884 or 1 per respondent.
Estimated total annual burden on respondents: 15,107.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed in Washington, DC, on May 31, 2002.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 02-14406 Filed 6-7-02; 8:45 am]

BILLING CODE 3410-08-P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Approval of a New Information Collection With Use of a Survey

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBS) intention to request approval of a new information collection in order to render service to associations of producers of agricultural, forestry, fisheries products and federations and subsidiaries thereof as authorized in the Cooperative Marketing Act of 1926.

DATES: Comments on this notice must be received by August 9, 2002, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Bruce J. Reynolds, Agricultural Economist, RBS, U.S. Department of Agriculture, 1400 Independence Avenue SW., Stop 3253, Washington, DC 20250-3253, Telephone (202) 720-3694.

SUPPLEMENTARY INFORMATION:

Title: Survey of Cooperatives on Selecting Candidates for Director Elections.

Type of Request: New Information Collection.

Abstract: The mission of the Rural Business-Cooperative Service (RBS) is to assist farmer-owned cooperatives in improving the economic well being of their farmer-members. This is accomplished through a comprehensive program of research on structural, operational, and policy issues affecting cooperatives; technical advisory assistance to individual cooperatives and to groups of producers who wish to organize cooperatives; and development of educational and informational

material. The authority to carry out RBS's mission is defined in the Cooperative Marketing Act of 1926 (44 Stat. 802-1926).

Authority and Duties of Division (7 U.S.C. 453).

(a) The division shall render service to associations of producers of agricultural products, and federations and subsidiaries thereof, engaged in the cooperative marketing of agricultural products including processing, warehousing, manufacturing, storage, the cooperative purchasing of farm supplies, credit, financing, insurance, and other cooperative activities.

(b) The division is authorized to:

(1) acquire, analyze and disseminate economic, statistical, and historical information regarding the progress, organization, and business methods of cooperative associations in the United States and foreign countries.

(2) conduct studies of the economic, legal, financial, social and other phases of cooperation, and publish the results thereof. Such studies shall include the analyses of the organization, operation, financial and merchandising problems of cooperative organizations.

(3) make surveys and analyses if deemed advisable of the accounts and business practices of representative cooperative associations upon their request; to report to the association so surveyed the results thereof; and with the consent of the association so surveyed to publish summaries of the results of such surveys, together with similar facts, for the guidance of cooperative associations and for the purpose of assisting cooperative associations in developing methods of business and market analysis.

(4) acquire from all available sources, information concerning crop prospects, supply, demand, current receipts, exports, imports, and prices of agricultural products handled or marketed by cooperative associations, and to employ qualified commodity marketing specialists to summarize and analyze this information and disseminate the same among cooperative associations and others.

Cooperatives are a distinct form of business by having ownership and control by a membership of those who are users of the services provided by such businesses. Their democratic governance involves elections of and by members to the boards of directors. Cooperatives operate in highly competitive industries and require not only the highest caliber of management, but also effective leadership and guidance from those members who are elected to serve on boards. This survey is designed to pool the knowledge of

different methods used by cooperatives in selecting candidates for election to their boards. Survey results will be summarized for purposes of comparison and information sharing. Alternative methods of selecting candidates will be analyzed in a context of appropriate and effective methods for different types of cooperatives in terms of membership size and complexity of business operations. No previous surveys of this topic have been conducted for U.S. agricultural cooperatives.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 13.75 minutes (0.23 hours) per response.

Respondents: Cooperatives with at least \$5M in assets and at least 200 members.

Estimated Number of Respondents: 490.

Estimated Number of Responses per Respondent: one.

Estimated Total Annual Burden on Respondents: 113 hours.

Copies of this information collection can be obtained from Jean Mosley, Regulations and Paperwork Management Branch, at (202) 692-0041.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the Agency, including whether the information will have practical utility; (b) 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;

(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 through use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Jean Mosley, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, 1400 Independence Avenue SW., Stop 0742, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of a public record.

Dated: June 4, 2002.

John Rosso,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 02-14538 Filed 6-7-02; 8:45 am]

BILLING CODE 3410-XY-P

DEPARTMENT OF COMMERCE**Submission For OMB Review;
Comment Request**

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Monthly Wholesale Trade Survey.

Form Number(s): SM-42(00).

Agency Approval Number: 0607-0190.

Type of Request: Extension of a currently approved collection.

Burden: 5,320 hours.

Number of Respondents: 3,800.

Avg Hours Per Response: 7 minutes.

Needs and Uses: The U.S. Census Bureau requests a three-year extension of the current OMB approval of the Monthly Wholesale Trade Survey (MWTS). The MWTS canvasses firms primarily engaged in merchant wholesale trade that are located in the United States. This survey provides the only continuous measures of monthly wholesale sales, end-of-month inventories, method of inventory valuation, and inventories/sales ratios. The sales and inventory estimates produced from the MWTS provide current trends of economic activity by kind of business for the United States. Also, the estimates compiled from this survey provide valuable information for economic policy decisions by the government and are widely used by private businesses, trade organizations, professional associations, and other business research and analysis organizations.

The estimates produced by the MWTS are critical to the accurate measurement of total economic activity of the United States. The estimates of sales made by wholesale locations represent only merchant wholesalers who take title to goods bought for resale to other companies. Wholesalers normally sell to industrial distributors, retail operations, cooperatives, and other businesses. The sales estimates include sales made on credit as well as on a cash basis, but exclude receipts from sales taxes and interest charges from credit sales.

The estimates of merchandise inventories represent all merchandise held in wholesale locations, warehouses, and offices, as well as goods held by others for sale on consignment or in transit for distribution to wholesale establishments. The estimates of merchandise inventories exclude

fixtures and supplies not for resale, as well as merchandise held on consignment which are owned by others. Inventories are an important component in the Bureau of Economic Analysis's (BEA) calculation of the investment portion of the Gross Domestic Product (GDP).

Affected Public: Businesses or other for-profit, Federal Government, State, local or Tribal Governments.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Susan Schechter, (202) 395-5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202)482-3129, Department of Commerce, room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: June 4, 2002.

Madeleine Clayton,

*Departmental Paperwork Clearance Officer,
Office of the Chief Information Officer.*

[FR Doc. 02-14428 Filed 6-7-02; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE**Submission For OMB Review;
Comment Request**

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Current Population Survey (CPS) Basic Demographic Items.

Form Number(s): CPS-263, CPS-263(SP), CPS-263A, CPS-264, CPS-264(SP), CPS-264A, CPS-266, BC-1428, BC-1428(SP), BC-1433, BC-1433(SP), CPS-692, CPS-504.

Agency Approval Number: 0607-0049.

Type of Request: Extension of a currently approved collection.

Burden: 18,012 hours.

Number of Respondents: 57,000.

Avg Hours Per Response: 1.58 minutes.

Needs and Uses: The Census Bureau requests continued Office of

Management and Budget (OMB) clearance for the collection of basic demographic information in the Current Population Survey (CPS).

The CPS has been the source of official government statistics on employment and unemployment for over 50 years. The Bureau of Labor Statistics (BLS) and the Census Bureau jointly sponsor the basic monthly survey, and the Census Bureau prepares and conducts all the field work. The Census Bureau provides the BLS with data tapes and tables. The BLS seasonally adjusts, analyzes, and publishes the results for the labor force data in conjunction with the demographic characteristics. In accordance with the OMB's request, the Census Bureau and the BLS divide the clearance request in order to reflect the joint sponsorship and funding of the CPS program.

The demographic information provides a unique set of data on selected characteristics for the civilian noninstitutional population. Some of the demographic information we collect is age, marital status, gender, Armed Forces status, education, race, origin, and family income. We use these data in conjunction with other data, particularly the monthly labor force data, as well as periodic supplement data. We use these data also independently for internal analytic research and for evaluation of other surveys. In addition, we need these data to correctly control estimates of other characteristics to the proper proportions of age, gender, race, and origin.

Affected Public: Individuals or households.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Susan Schechter, (202) 395-5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202)482-3129, Department of Commerce, room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: June 4, 2002.

Madeleine Clayton,

*Departmental Paperwork Clearance Officer,
Office of the Chief Information Officer.*

[FR Doc. 02-14429 Filed 6-7-02; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 020514120-2120-01]

RIN 0694-AC63

Computer Technology and Software Eligible for Export or Reexport Under License Exception TSR (Technology and Software Under Restriction)

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry.

SUMMARY: The Bureau of Industry and Security (BIS) is reviewing the current limit for use of License Exception TSR for exports and reexports of technology and software on the Commerce Control List (CCL) of the Export Administration Regulations (EAR) under Export Classification Control Numbers (ECCNs) 4D001 and 4E001. These ECCNs control technology and software that can be used for the development, production, or use of computers. The goal of this notice of inquiry is to collect information from industry that will assist BIS in evaluating whether the current TSR eligibility level of 33,000 Millions of Theoretical Operations per Second (MTOPS) for exports and reexports to most countries should be adjusted, taking into consideration the control level for the export of computer equipment and the control policies of other member countries of the Wassenaar Arrangement.

DATES: Comments must be received by July 10, 2002.

ADDRESSES: Written comments (four copies) should be sent to Sharron Cook, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., PO Box 273, Room 2705, Washington, DC 20230; or one copy E-Mailed to: scook@bis.doc.gov; or faxed to 202-482-3355.

FOR FURTHER INFORMATION CONTACT: Sharron Cook, Senior Export Policy Analyst, Office of Exporter Services, Regulatory Policy Division, Bureau of Industry and Security, Telephone: (202) 482-2440.

SUPPLEMENTARY INFORMATION:

Background

The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Arrangement) is one of four multilateral export control regimes in which the United States participates. The Arrangement's purpose is to contribute to regional and international security and stability by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies (*i.e.*, having civil and military uses) to prevent destabilizing accumulations of those items by countries of concern. The Arrangement establishes lists of items to which member countries are to apply export controls. Member governments implement these controls to ensure that transfers of the controlled items do not contribute to the development or enhancement of military capabilities that undermine the goals of the Arrangement, and are not diverted to support such capabilities. In addition, the Arrangement imposes some reporting requirements on its member governments.

The U.S. Government controls all items for export that are controlled multilaterally by the Arrangement. In general, the U.S. Department of Commerce administers export controls for dual-use goods and technologies controlled in the Arrangement, and the U.S. Department of State administers export controls on conventional arms.

Through the Export Administration Regulations (EAR), the Commerce Department controls the export and reexport of technology and software for the development, production, or use of computers with a Composite Theoretical Performance (CTP) greater than 28,000 Millions of Theoretical Operations per Second (MTOPS) under Export Control Classification Numbers (ECCNs) 4E001 and 4D001 of the Commerce Control List (CCL). Such technology requires a license, for national security (NS) reasons, to all destinations except Canada. However, ECCNs 4E001 and 4D001 provide that License Exception TSR (section 740.6 of the EAR) is available for exports and reexports of such technology and software: (1) For computers of unlimited CTP to 22 countries (former member countries of the Coordinating Committee for Multilateral Export Controls (COCOM) or former cooperating countries of COCOM) when the transaction meets certain eligibility criteria; and (2) for computers with a CTP less than or equal to 33,000 MTOPS to countries listed in Country Group B (Supplement No. 1 to part 740).

Under the Wassenaar Arrangement, there are currently three levels of sensitivity for computers and computer technology. Equipment, technology and software are controlled for computers with a CTP of 28,000 MTOPS on the Basic List, 75,000 MTOPS on the Sensitive List, and 150,000 MTOPS on the Very Sensitive List.

Historically, the U.S. has required a license for any item on the Wassenaar Very Sensitive List, and has made such items generally ineligible for license exceptions. However, in March of this year, BIS implemented a Presidential decision to allow exports and reexports of computers with a CTP of up to 190,000 MTOPS under license exception CTP to Computer Tier 3 Countries (see section 740.7(d)(1) of the EAR for a list of these countries) to reflect rapid technological advances in computing capability. The President's report to Congress stated that this change was to "promote our national security, enhance the effectiveness of our export control system and ease unnecessary regulatory burdens on both government and industry." Industry, through the Regulations and Procedures Technical Advisory Committee (RPTAC), has requested that BIS raise the CTP limit for license exception TSR eligibility of technology and software for the development, production, and use of these computers. One reason stated by industry is that companies need a limit for technology and software corresponding to the limit for equipment in order to provide foreign nationals working in their U.S. and foreign manufacturing plants access to this technology and software.

The goal of this notice is to collect information from industry that will assist BIS in evaluating the current control level on the export of computer technology and software.

To ensure maximum public participation in the review process, comments are solicited for the next 30 days on the effect of the current CTP limit of 33,000 MTOPS for license exception TSR eligibility of technology and software for the development, production, and use of computers. BIS is interested in comments relating to the following:

(1) What is the purpose of U.S. companies in exporting technology and software for the development, production, and use of computers with a CTP greater than 33,000 MTOPS? Are the exports for transfers to U.S. subsidiaries, branches, or joint ventures that manufacture products abroad; sales to foreign manufacturers; or largely for release to foreign nationals for work

designing and developing new products in the United States?

(2) If the exports of software and technology are largely to foreign nationals for work in designing and developing new products in the United States, what is the economic and competitiveness impact on U.S. industry of maintaining the current TSR level? Does maintaining the current level impair the timely introduction of new products into the market?

(3) What percentage of current employees is restricted by TSR limits? What percentage is expected to be limited in 2–3 years? In 5–7 years?

(4) What is the foreign availability of technology and software for the production, development, and use of computers with a CTP greater than 33,000 MTOPS?

(5) What controls do U.S. trade partners maintain on the export of technology and software for the development, production, and use of computers? What are the MTOPS limits and do our trade partners use license exceptions or other licensing measures?

(6) In light of recent changes in architectures and technology, what performance levels can be identified for TSR limits? What alternate methods or metrics should be considered for technology and software control under TSR?

(7) Any other information relevant to the current 33,000 MTOPS TSR level.

(8) Additional views on the format of license exception TSR eligibility language.

Parties submitting comments are asked to be as specific as possible. The Department encourages interested persons who wish to comment to do so at the earliest possible time.

The period for submission of comments will close July 10, 2002. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in the development of final regulations. All comments on these regulations will be a matter of public record and will be available for public inspection and copying. The Department requires comments be submitted in written form.

The public record concerning these comments will be maintained in the Bureau of Industry and Security, Office of Administration, U.S. Department of Commerce, Room 6883, 14th and Constitution Avenue, NW., Washington, DC 20230; (202) 482-0637. This component does not maintain a separate public inspection facility. Requesters should first view BIS's FOIA Web site (which can be reached through <http://www.bis.doc.gov/foia>). If the records sought cannot be located at this site, or if the requester does not have access to a computer, please call the phone number above for assistance.

Dated: May 31, 2002.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 02-14217 Filed 6-7-02; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-702]

Notice of Initiation of Changed Circumstances Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe and Tube Fittings From Japan

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

ACTION: Notice of Initiation of Changed Circumstances Antidumping Duty Administrative Review.

SUMMARY: In accordance with 19 CFR 351.216 of the Department of Commerce (the Department) regulations, Benex Corporation (Benex) requested a changed circumstances administrative review pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act).

The Department finds, in response to this request, that it contains information sufficient to warrant initiating a changed circumstances review on stainless steel butt-weld pipe and tube fittings (SSPFs) from Japan.

EFFECTIVE DATE : June 10, 2002.

FOR FURTHER INFORMATION CONTACT: Jack K. Dulberger or Tom Futner, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-5505 or (202) 482-3814, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise stated, all citations to the Tariff Act of 1930, as amended, are references to the provisions as of January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the regulations of the Department are to 19 CFR Part 351 (2001).

Background

On March 25, 1988, the Department published in the **Federal Register** the antidumping order on SSPFs from Japan. *See Antidumping Duty Order of Sales at Less Than Fair Value; Stainless Steel Butt-Weld Pipe and Tube Fittings from Japan* 53 FR 9787. On April 19, 2002, Benex submitted a letter stating that on November 16, 2001, it had acquired the SSPFs business of Benkan Corporation (Benkan), which had filed for bankruptcy in October 2000. Benex further stated that it purchased Benkan's manufacturing facilities (in Yuki City and Kiryu City, Japan) and materials inventory. Benex stated that it had no previous experience in the SSPFs business, and had been formed by Japanese investors for the specific purpose of bringing Benkan out of bankruptcy and turning around its SSPFs operations. Benex stated that, in view of the foregoing, it is the successor-in-interest to Benkan and, as such, Benex is entitled to receive the same antidumping treatment as is accorded Benkan. In its April 19, 2002 letter, Benex also requested that the Department conduct an expedited changed circumstances review, pursuant to 19 CFR 351.216(e).

Scope of Review

The products covered by this review include certain stainless steel butt-weld pipe and tube fittings, or SSPFs. These fittings are used in piping systems for chemical plants, pharmaceutical plants, food processing facilities, waste treatment facilities, semiconductor equipment applications, nuclear power plants and other areas. This merchandise is currently classifiable under the Harmonized Tariff Schedules (HTS) item number 7307.23.0000. While the HTS item number is provided for convenience and for Customs purposes, the written product description remains dispositive as to the scope of the product coverage.

Initiation of Changed Circumstances Antidumping Duty Review

At the request of Benex, and in accordance with section 751(b) of the Act and 19 CFR 351.216 of the

Department's regulations, the Department is initiating a changed circumstances review of SSPFs from Japan to determine whether Benex is the successor-in-interest to Benkan for purposes of ascertaining antidumping duty liability in this proceeding. In making such a successor-in-interest determination, the Department typically examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Brass Sheet and Strip from Canada: Notice of Final Results of Antidumping Administrative Review*, 57 FR 20460, 20462 (May 13, 1992) (*Canadian Brass*). While no single factor or combination of factors will necessarily be dispositive, the Department generally will consider the new company to be the successor to the previous company if its resulting operation is essentially similar to that of its predecessor. *See, e.g., Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review*, 59 FR 6944, 6945 (February 14, 1994) and *Canadian Brass*, 57 FR 20460. Thus, if the record evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department may assign the new company the cash deposit rate of its predecessor. *See, e.g., Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changes Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999). Additionally, in the event that the Department concludes that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results.

The Department concludes that it would be inappropriate to expedite this action pursuant to 19 CFR 351.221(c)(3)(ii) by issuing a preliminary determination prior to conducting an investigation in the instant case. The Department has reviewed the information contained in Benex's April 19, 2002, letter and requires further information regarding successor-in-interest factors including management (*e.g.*, document translations), production (*e.g.*, details of various facilities), suppliers (*e.g.*, clarifications as to suppliers), and customer base (*e.g.*, clarifications as to sales channels). The Department's need for additional information, which we will address in a future information request to Benex, makes expedited action impracticable and, therefore, the

Department is not issuing preliminary results of its changed circumstances antidumping duty administrative review at this time.

The Department will publish in the **Federal Register** a notice of preliminary results of antidumping duty changed circumstances review, in accordance with 19 CFR 351.221(b)(4) and 351.221(c)(3)(i), which will set forth the factual and legal conclusions upon which our preliminary results are based and a description of any action proposed based on those results. Pursuant to 351.221(b)(4), interested parties will have an opportunity to comment. The Department will issue its final results of review not later than 270 days after publication of this notice of initiation. All written comments must be submitted to the Department and served on all interested parties on the Department's service list in accordance with 19 CFR 351.303.

During the course of this changed circumstances review, we will not change any cash deposit instructions on the merchandise subject to this changed circumstances review, unless a change is determined to be warranted pursuant to the final results of this review.

This initiation of review notice is in accordance with sections 751(b) and 777(i)(1) of the Act and 19 CFR 351.221(c)(3).

Dated: June 3, 2002

Faryar Shirzad,
Assistant Secretary for Import
Administration.

[FR Doc. 02-14514 Filed 6-7-02; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475-822]

Preliminary Results of Antidumping Administrative Review: Stainless Steel Plate in Coils from Italy

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

ACTION: Notice of Preliminary Results in the Antidumping Duty Administrative Review of Stainless Steel Plate in Coils from Italy.

SUMMARY: In response to a request from ThyssenKrupp Acciai Speciali Terni S.p.A ("TKAST") and ThyssenKrupp AST USA, Inc. ("TKASTUSA"), the U.S. Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on stainless steel plate in coils ("SSPC") from Italy

for the period May 1, 2000, through April 30, 2001. The Department preliminarily determines that no dumping margin exists for TKAST's sales of SSPC in the United States. If these preliminary results are adopted in our final results of this administrative review, we will instruct the U.S. Customs Service not to assess antidumping duties on entries of TKAST's merchandise during the period of review ("POR"). The preliminary results are listed in the section titled "Preliminary Results of Review," *infra*.

EFFECTIVE DATE: June 10, 2002.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey or Robert Bolling, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: 202-482-1102, or 202-482-3434, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2001).

SUPPLEMENTARY INFORMATION:

Background

On May 21, 1999, the Department published in the Federal Register the antidumping duty order on SSPC from Italy. *See Antidumping Duty Orders; Certain Stainless Steel Plate in Coils from Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan*, 64 FR 27756 (May 21, 1999). On May 1, 2001, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" of this antidumping duty order on SSPC from Italy for the period May 1, 2000, through April 30, 2001. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review* 66 FR 21740 (May 1, 2001). On May 31, 2001, TKAST, an Italian producer and exporter of the subject merchandise, and TKASTUSA, TKAST's affiliated United States re-seller, requested that the Department conduct a review of its sales of the Department's antidumping duty order on SSPC from Italy. On June 19, 2001, in accordance with section 751(a) of the Act, the Department published in

the **Federal Register** a notice of initiation of this antidumping duty administrative review for the period May 1, 2000 through April 30, 2001. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 32934 (June 19, 2001).

On July 11, 2001, the Department issued its antidumping duty questionnaire to TKAST. On August 8, 2001, TKAST reported that it made sales of subject merchandise to the United States during the POR in its response to section A of the Department's questionnaire. On August 27, 2001, TKAST submitted its responses to sections B, C, and D of the Department's questionnaire.

On September 17, 2001, petitioners requested that the Department initiate a sale below cost of production ("COP") investigation with respect to home market sales of SSPC made by TKAST and its affiliates. On October 22, 2001, the Department initiated a sales-below-cost investigation and issued a section D questionnaire to TKAST. See letter from the Department to TKAST, dated October 22, 2001 and *Memorandum to the File from Stephen Shin to Edward Yang: Administrative Review of Antidumping Duty Order on Stainless Steel Plate and Coil from Italy: Analysis of Petitioners' Allegation of Sales Below the Cost of Production for Acciai Speciali Terni S.p.A.*, dated October 22, 2001 ("Below Cost Memo").

On October 30, 2001, the Department issued a supplemental questionnaire for section A of TKAST's questionnaire response. On November 23, 2001, TKAST submitted its response to the Department's section D questionnaire. On November 26, 2001, the Department issued a supplemental questionnaire for sections B & C of TKAST's questionnaire response. On November 30, 2001, TKAST submitted its response to the Department's section A supplemental questionnaire. On December 3, 2001, the Department published an extension of time limit for the preliminary results of the antidumping duty administrative review until April 2, 2002. See *Notice of Extension of the Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Plate in Coils from Italy*, 66 FR 60196 (December 3, 2001). On December 21, 2001, TKAST submitted its response to the Department's sections B & C supplemental questionnaire. On February 15, 2002, the Department issued a supplemental questionnaire for section D of TKAST's questionnaire response. On March 5, 2002, the Department published an extension of

time limit for the preliminary results of the antidumping duty administrative review until May 31, 2002. See *Notice of Extension of Time Limits for the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Plate in Coils from Italy*, 67 FR 9960 (March 5, 2002). On March 8, 2001, TKAST submitted its response to the Department's section D supplemental questionnaire. On March 14, 2002, the Department issued its second supplemental questionnaire for sections A through C of TKAST's supplemental response. On March 21, 2002, the Department issued its second supplemental questionnaire for section D of TKAST's supplemental response. On April 3, 2002, TKAST submitted its response to the Department's second sections A-D supplemental questionnaires.

Scope of Review

For purposes of this administrative review, the product covered is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (e.g., cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this petition are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. In addition, certain cold-rolled stainless steel plate in coils is also excluded from the scope of these orders. The excluded cold-rolled stainless steel plate in coils is defined as that merchandise which meets the physical characteristics described above that has undergone a cold-reduction process that reduced the thickness of the steel by 25 percent or more, and has been annealed and pickled after this cold reduction process.

The merchandise subject to this review is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219110030, 7219110060, 7219120005, 7219120020, 7219120025, 7219120050, 7219120055, 7219120065, 7219120070, 7219120080, 7219310010, 7219900010, 7219900020, 7219900025, 7219900060, 7219900080, 7220110000, 7220201010, 7220201015, 7220201060, 7220201080,

7220206005, 7220206010, 7220206015, 7220206060, 7220206080, 7220900010, 7220900015, 7220900060, and 7220900080. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by TKAST for use in our preliminary results. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by TKAST. We verified sales and cost information provided by TKAST from April 10, 2002 to April 19, 2002. Our verification results are outlined in the public version of the verification report and are on file in the Central Records Unit ("CRU") located in room B-099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW., Washington, D.C.

Product Comparison

In accordance with section 771(16) of the Act, we considered all SSPC products produced by TKAST, covered by the description in the "Scope of Review" section of this notice, supra, and sold in the home market during the POR to be foreign like products for the purpose of determining appropriate product comparisons to SSPC products sold in the United States. We have relied on seven characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product (listed in order of preference): grade, hot/cold rolled, width, gauge, finish, edge trim, and patterns in relief. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the July 11, 2001, antidumping duty questionnaire and instructions, or to constructed value ("CV"), as appropriate.

Constructed Export Price

We calculated CEP in accordance with section 772(b) of the Act because the first sales to an unaffiliated purchaser took place after the subject merchandise was imported into the United States.

We based CEP on the packed ex-warehouse or delivered prices to unaffiliated purchasers in the United States. Where appropriate, we made a deduction from the starting price for credit and added an amount for an alloy

surcharge. We also made deductions for the following movement expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act: international freight (includes foreign transportation from plant to port, foreign insurance; shipment from port to the United States, and marine insurance); U.S. inland freight from port to the unaffiliated customer (includes U.S. insurance); other U.S. transportation expenses (includes brokerage, wharfage and trucking), and U.S. Customs duties. In accordance with section 772(d)(1) of the Act, we deducted selling expenses associated with economic activities occurring in the United States, including direct selling expenses, inventory carrying costs, and other indirect selling expenses. We recalculated inventory carrying costs because TKAST revised its interest rate for credit, but failed to revise inventory carrying cost using the new interest rate. See *Memorandum from Stephen Bailey to the File: Analysis for ThyssenKrupp Acciai Speciali Terni S.p.A* ("TKAST") for the preliminary results of the administrative review stainless steel plate in coils from Italy for the period May 1, 2000 through April 30, 2001, ("Analysis Memo") dated May 31, 2002 and *Second Administrative Review of Stainless Steel Plate in Coils from Italy - Sales and Cost Verification Report for ThyssenKrupp Acciai Speciali Terni S.p.A.*, dated May 13, 2002 ("Verification Report").

We deducted the profit allocated to expenses deducted under section 772(d)(1) and (d)(2) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenues realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity, based on the ratio of total U.S. expenses to total expenses for both the U.S. and home market.

Normal Value

After testing home market viability, as discussed below, we calculated normal value ("NV") as noted in the "Price-to-CV Comparisons" and "Price-to-Price Comparisons" sections of this notice.

1. Home Market Viability

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the

aggregate volume of U.S. sales), we compared TKAST's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. Because TKAST's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. We therefore based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the cost of production ("COP"), we based NV on prices to home market customers. We calculated NV based on prices to affiliated and unaffiliated home market customers. Where appropriate, we deducted rebates, credit expenses, warranty expenses, inland freight, and inland insurance in accordance with 773(a)(6)(B). We also adjusted the starting price for billing adjustments and an alloy surcharge. We recalculated a payment date for a particular home market sale because at verification we found that the actual payment date was one day later than the payment date which was reported to the Department. See *Analysis Memo* and *Verification Report*.

We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Additionally, in accordance with section 773(a)(6)(A) and (B), we deducted home market packing costs and added U.S. packing costs. In accordance with the Department's practice, where all contemporaneous matches to a U.S. sale observation resulted in difference-in-merchandise adjustments exceeding 20 percent of the cost of manufacturing ("COM") of the U.S. product, we based NV on CV.

Arm's-Length Sales

TKAST reported that it made sales in the home market to affiliated and unaffiliated end users and distributors/retailers. Sales to affiliated customers in the home market not made at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all billing adjustments, movement charges, direct selling expenses, discounts and packing, but included the alloy surcharge. Where prices to the affiliated party were on average 99.5 percent or more of the price to the unrelated party, we

determined that sales made to the related party were at arm's length. See 19 CFR 351.403(c). Where no affiliated customer ratio could be calculated because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's length and, therefore, excluded them from our analysis. See, e.g., *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37077 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made comparisons to the next most similar model. In our home market NV calculation, we have included TKAST's sales to its affiliated resellers, because all affiliated resellers passed the Department's arm's length test criteria. Therefore, we have not included downstream sales from TKAST's affiliated resellers to their customers.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. We calculated CV based on the costs of materials and fabrication employed in producing the subject merchandise, selling, general and administrative expenses ("SG&A"), and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expense and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Italy. For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. Where we compared CV to CEP, we deducted from CV the weighted-average home market direct selling expenses.

2. Cost of Production Analysis

Based on the information contained in a timely filed cost allegation by the petitioners on September 17, 2001, the Department found reasonable grounds to believe or suspect that TKAST made sales in the home market at prices below the cost of producing the merchandise in this review, pursuant to section 773(b)(1) of the Act. As a result, the Department initiated a cost of production inquiry in this case to determine whether TKAST made home market sales during the POR at prices below their respective COPs within the

meaning of section 773(b) of the Act. See Below Cost Memo.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of TKAST's cost of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses ("G&A"), including interest expenses, and packing costs. We relied on the COP data submitted by TKAST in its original and supplemental cost questionnaire responses. For these preliminary results, we revised the following: (1) TKAST's general and administrative ("G&A") rate because TKAST failed to calculate its G&A rate as a percentage of the cost of sales as presented in its audited financial statements; (2) TKAST's interest expense ratio because TKAST applied its interest expense ratio to the per-unit variable cost (VCOM) of each model, rather than the per-unit total cost of production (TOTCOM); and (3) TKAST's cost of manufacturing to include expenses for technical services because TKAST classified the expenses incurred at cost centers dedicated to creating mill certificates, quality control and mechanical laboratory testing for stainless steel as technical services rather than as costs dedicated to producing the subject merchandise. See *Analysis Memo* and *Verification Report*.

B. Test of Home Market Prices

On a product-specific basis, we compared the weighted-average COP for TKAST to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in accordance with section 773(b)(1)(A) and (B) of the Act. We compared the COP to home market prices, less any applicable billing adjustments, movement charges, discounts, and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of TKAST's sales of a given product were at prices below the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in

"substantial quantities." Where 20 percent or more of TKAST's sales of a given product during the POR were at prices below the COP, we determined that such sales have been made in "substantial quantities" pursuant to section 773(b)(2)(C)(i) within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, because we use POR average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. For those sales of subject merchandise for which there were no comparable home market sales in the ordinary course of trade, we compared CEP to CV in accordance with section 773(a)(4) of the Act.

D. Calculation of Constructed Value

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of TKAST's cost of materials, fabrication, general and administrative ("G&A") (including interest expenses), U.S. packing costs, direct and indirect selling expenses, and profit. In accordance with section 773(e)(2)(A) of the Act, we based selling, general and administrative ("SG&A") and profit on the amounts incurred and realized by TKAST in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses. For CV, we made the same adjustments described in the COP section above.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market, or when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects

price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997).

In implementing these principles in this review, we obtained information from TKAST about the marketing stages involved in its reported U.S. and home market sales, including a description of the selling activities performed by TKAST for each channel of distribution. In identifying levels of trade for CEP and home market sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. See *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314-1315 (Fed. Cir. 2001). Generally, if the reported levels of trade are the same in the home and U.S. markets, the functions and activities of the seller should be similar. Conversely, if a party reports levels of trade that are different for different categories of sales, the functions and activities may be dissimilar.

In the home market, TKAST reported one level of trade. TKAST sold through two channels of distribution in the home market: (1) directly from its mill to affiliated and unaffiliated distributors/retailers or end users; and (2) from inventory to affiliated and unaffiliated distributors/retailers or end users. For sales in home market channel one, TKAST performed sales-related activities, including pre-sale and continuous technical assistance; sample analysis; price negotiation and customer communication; processing of customer order; arranging for freight and delivery; sales calls and visits; credit and collection; and warranty services. The same selling functions were performed in home market channel two; however, unlike direct factory sales, these sales carry no guarantee or warranty. Also, TKAST, rather than the customer, typically initiates sales of products through channel two by distributing a list of available products to potential customers. Despite these variations, we find that the selling activities in the two

channels of distribution are similar. Because these selling functions are similar for both sales channels, except for the initiation of the sale, we preliminarily determine that home market sales in the two channels of distribution constitute a single level of trade.

We reviewed the selling functions and services performed by TKAST in the U.S. market, as represented by TKAST in its section A response. TKAST reported one LOT for sales to the U.S. TKAST sold through one channel of distribution in the U.S. market: (1) directly from its mill through TKASTUSA to unaffiliated distributors/ service centers. TKAST indicated that the selling functions performed by TKAST for CEP sales for its U.S. back-to-back sales are the same functions described above for home market channel one (i.e., pre-sale and continuous technical assistance; sample analysis; price negotiation and customer communication, etc). In addition, TKAST reported that TKASTUSA performed selling functions for its back-to-back sales from TKASTUSA to unaffiliated U.S. customers which include the following: processing inquiries and purchase orders; price negotiation; freight and delivery arrangements from TKAST's plant to the U.S. port (including the cost of transporting the goods to the European port, port handling, and ocean freight); sales calls and visits; invoicing; and extending credit. We preliminarily find that the selling functions in the U.S. through TKAST's single channel of distribution represent one level of trade.

In order to determine whether NV was established at a different LOT than CEP sales, we examined stages in the marketing process and selling functions along the chains of distribution between TKAST and its home market customers. We compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, after deductions for economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market levels of trade constituted more advanced stages of distribution than the CEP level of trade. Based on our analysis of the selling functions performed for sales in the HM and CEP sales in the U.S. market described above, we preliminarily determine that there is not a significant difference in the selling functions performed in the home market and U.S. market and that these sales are made at the same LOT. Because we found that no difference in the level of trade exists between the

home market and U.S. market, we have not granted a CEP offset to TKAST.

Currency Conversion

For purposes of the preliminary results, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank in accordance section 773A(a) of the Act.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists:

STAINLESS STEEL SHEET AND STRIP IN COILS

Producer/Manufacturer/Exporter	Weighted-Average Margin
TKAST	0.00%

Pursuant to 19 CFR 351.224, the Department will disclose to any party to the proceeding, within ten days of publication of this notice, the calculations performed. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. The Department will publish the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at a hearing, within 120 days after the publication of this notice.

Upon issuance of the final results of review, the Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisal instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the results and for future deposits of estimated duties. For duty assessment purposes, we calculated an importer-specific assessment rate by dividing the total dumping margins calculated for the U.S. sales to the importer by the total entered value of these sales. This rate will be used for the assessment of antidumping duties on all

entries of the subject merchandise by that importer during the POR.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided in section 751(a)(1) of the Act: 1) the cash deposit rate for TKAST will be that established in the final results of this review; 2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established in the most recent period for the manufacturer of the merchandise; and 4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will continue to be the "all other" rate established in the LTFV investigation, which was 39.69 percent. See *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Italy*, 64 FR 15458 (March 31, 1999).

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

This administrative review and notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 31, 2002
Faryar Shirzad,
Assistant Secretary for Import Administration.
 [FR Doc. 02-14515 Filed 6-7-02; 8:45 am]
BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-588-857]

Certain Welded Large Diameter Line Pipe From Japan: Notice of Initiation of Changed Circumstances Review of the Antidumping Order, and Notice of Consideration of Revocation of Order (in Part).

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

ACTION: Notice of initiation of changed circumstances antidumping duty review.

SUMMARY: In accordance with 19 CFR 351.216(b), BP America, Inc. ("BP America"), a U.S. importer of the subject merchandise, filed a request for a changed circumstances review of the antidumping order on welded large diameter line pipe (LDLP) from Japan with respect to certain products as described below. American Cast Iron Pipe Co., American Steel Pipe Division; Berg Steel Pipe Corp.; and Stupp Corp., the petitioners in the sales at less than fair value investigation ("the petitioners"), filed a letter with the Department of Commerce ("the Department") stating that they do not object to the exclusion of these products from the order. In response to the expressed lack of interest in these products from members of the domestic industry, the Department of Commerce ("the Department") is initiating a changed circumstances review with respect to this request for certain welded large diameter line pipe as described below.

EFFECTIVE DATE: June 10, 2002.

FOR FURTHER INFORMATION CONTACT: Shireen Pasha, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-0193.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended ("the Act"), by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 C.F.R. Part 351 (2001).

SUPPLEMENTARY INFORMATION:**Background**

On December 6, 2001, the Department published in the **Federal Register** the antidumping duty order on welded large diameter line pipe from Japan. See *Notice of Antidumping Duty Order: Welded Large Diameter Line Pipe from Japan* (66 FR 63368). On April 17, 2002, BP America, a U.S. importer, requested that the Department revoke in part the antidumping duty order on certain welded large diameter line pipe from Japan. Specifically, BP America requested that the Department revoke the order with respect to imports meeting the following specifications and sizes: in API grades X80 or above, having an outside diameter of 48 inches to and including 52 inches, and with a wall thickness of 0.90 inch or more; and, in API grades X100 or above, having an outside diameter of 48 inches to and including 52 inches, and with a wall thickness of 0.54 inch or more.

The petitioners consented, on a letter filed May 7, 2002, to the revocation of the order only as it applies to all welded LDLP in API grades X80 or above, having an outside diameter of 48 inches to and including 52 inches, and with a wall thickness of 0.90 inch or more. However, on May 21, 2002, the petitioners filed another letter stating that they would like to change their initial response from partial consent to that of full consent in excluding these products from the order, i.e., in API grades X80 or above, having an outside diameter of 48 inches to and including 52 inches, and with a wall thickness of 0.90 inch or more; and, in API grades X100 or above, having an outside diameter of 48 inches to and including 52 inches, and with a wall thickness of 0.54 inch or more. In accordance with Section 351.216(c), due to the lack of petitioners' interest, the Department finds good cause to initiate a changed circumstance review despite the final determination being less than 24 months old. This initiation will accord all interested parties an opportunity to address this proposed exclusion and will enable the Department to solicit comments from the parties to determine whether substantially all of the domestic producers support revocation of the order with respect to the merchandise in question. See *Certain Tin Mill Products From Japan: Final Results of Changed Circumstances Review*, 66 FR 52109 (October 12, 2001).

Scope of Review

The product covered by this antidumping order is certain welded carbon and alloy line pipe, of circular cross section and with an outside

diameter greater than 16 inches, but less than 64 inches, in diameter, whether or not stencilled. This product is normally produced according to American Petroleum Institute (API) specifications, including Grades A25, A, B, and X grades ranging from X42 to X80, but can also be produced to other specifications. The product currently is classified under U.S. Harmonized Tariff Schedule (HTSUS) item numbers 7305.11.10.30, 7305.11.10.60, 7305.11.50.00, 7305.12.10.30, 7305.12.10.60, 7305.12.50.00, 7305.19.10.30, 7305.19.10.60, and 7305.19.50.00. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope is dispositive. Specifically not included within the scope of this investigation is American Water Works Association (AWWA) specification water and sewage pipe and the following size/grade combinations; of line pipe:

—Having an outside diameter greater than or equal to 18 inches and less than or equal to 22 inches, with a wall thickness measuring 0.750 inch or greater, regardless of grade.

—Having an outside diameter greater than or equal to 24 inches and less than 30 inches, with wall thickness measuring greater than 0.875 inches in grades A, B, and X42, with wall thickness measuring greater than 0.750 inches in grades X52 through X56, and with wall thickness measuring greater than 0.688 inches in grades X60 or greater.

—Having an outside diameter greater than or equal to 30 inches and less than 36 inches, with wall thickness measuring greater than 1.250 inches in grades A, B, and X42, with wall thickness measuring greater than 1.000 inches in grades X52 through X56, and with wall thickness measuring greater than 0.875 inches in grades X60 or greater.

—Having an outside diameter greater than or equal to 36 inches and less than 42 inches, with wall thickness measuring greater than 1.375 inches in grades A, B, and X42, with wall thickness measuring greater than 1.250 inches in grades X52 through X56, and with wall thickness measuring greater than 1.125 inches in grades X60 or greater.

—Having an outside diameter greater than or equal to 42 inches and less than 64 inches, with a wall thickness measuring greater than 1.500 inches in grades A, B, and X42, with wall thickness measuring greater than 1.375 inches in grades X52 through X56, and with wall thickness measuring greater

than 1.250 inches in grades X60 or greater.

—Having an outside diameter equal to 48 inches, with a wall thickness measuring 1.0 inch or greater, in grades X-80 or greater.

Initiation of Changed Circumstances Antidumping Duty Administrative Review

Pursuant to section 751(d)(1) of the Act, the Department may revoke an antidumping or countervailing duty order, in whole or in part, based on a review under section 751(b) of the Act (i.e., a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant review of a final affirmative antidumping determination. Section 351.222(g) (2) of the Department's regulations provides that the Department will conduct a changed circumstances review under 19 C.F.R. 351.216 if the Secretary concludes from the available information that changed circumstances sufficient to warrant revocation or termination may exist. The Department may revoke an order (in whole or in part), if the Secretary determines that: (i) producers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or (ii) if other changed circumstances sufficient to warrant revocation exist. In this context, the Department has interpreted "substantially all" production normally to mean at least 85 percent of domestic production of the like product. See *Certain Tin Mill Products From Japan: Final Results of Changed Circumstances Review*, 66 FR 52109 (October 12, 2001). According to the Department's knowledge the following are U.S. producers of welded large diameter line pipe: American Cast Iron Pipe Co., American Steel Pipe Division; Berg Steel Pipe Corp.; Stupp Corp.; Bethlehem Steel Corp.; U.S. Steel Group, a Unit of USX Corp.; Camp-Hill Corp.; Lone Star Steel Co.; Napa Pipe Corp.; Pennsylvania Steel Technologies, Inc.; Oregon Steel mills, Inc.; and Saw Pipes USA, Inc.. Based upon the petitioners' statement of no interest and the silence of other domestic producers, the Department determines that there is information sufficient to warrant initiation of this changed circumstances review.

We will publish in the Federal Register a notice of preliminary results

of antidumping duty changed circumstances review, in accordance with 19 CFR 351.221(b)(4) and 351.221(c)(3)(i), which will set forth the factual and legal conclusions upon which our preliminary results are based and a description of any action proposed based on those results. As per section 351.221 (b) (4), interested parties will have an opportunity to comment. The Department will issue its final results of review no later than 270 days after publication of this notice of initiation. All written comments must be submitted to the Department and served on all interested parties on the Department's service list in accordance with 19 CFR 351.303.

During the course of this changed circumstances review, the current requirement for a cash deposit of estimated antidumping duties on all subject merchandise, including the merchandise subject to this changed circumstances review, will continue unless and until it is modified pursuant to the final results of this changed circumstances review or other administrative review.

This notice is in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216, 351.221(b), and 351.222(g)(3)(i).

Dated: June 3, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02-14513 Filed 6-7-02; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000927276-2103-03]

RIN 0648-ZA94

Coastal Services Center Broad Area Announcement

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of federal assistance.

SUMMARY: The NOAA Coastal Services Center (Center) is soliciting applications for federal assistance for the following program areas: Landscape Characterization and Restoration (LCR), Integration and Development (I&D), Outreach, Coastal Remote Sensing (CRS) and Information Resources (IR). This announcement provides guidelines for these program areas and includes details for the evaluation criteria, and selection

procedures of each program. Selected recipients will enter into either a cooperative agreement with the Center or receive a grant depending upon the amount of the Center's involvement in the project. Funding for these programs will be contingent upon availability of FY 2003 funding availability.

DATES: Each program area has specific dates for application and proposal deadlines. Refer directly to that program area description under **SUPPLEMENTARY INFORMATION** listed below.

ADDRESSES: Send all proposals to: NOAA Coastal Services Center, 2234 South Hobson Avenue, Charleston, SC 29405-2413. Landscape Characterization and Restoration (LCR) proposals should be sent to the attention of Jeffery Adkins, Room 238A.

Integration and Development (I&D) proposals should be sent to the attention of James Lewis Free, Room 236B.

Outreach proposals should be sent to the attention of Jan Kucklick, Room 142. Coastal Remote Sensing (CRS) proposals should be sent to the attention of Kirk Waters, Room 103. Information Resources (IR) proposals should be sent to the attention of Anne Ball, Room 211.

FOR FURTHER INFORMATION:

Administrative questions should be directed to Violet Legette, (843)-740-1222 or Violet.Legette@noaa.gov.

Technical point of contact for Landscape Characterization and Restoration is Jeffery Adkins, (843)-740-1244 or Jeffery.Adkins@noaa.gov.

Technical point of contact for Integration and Development is James Lewis Free, (843)-740-1185 or James.L.Free@noaa.gov. Technical point of contact for Outreach is Jan Kucklick, (843)-740-1279 or

Jan.Kucklick@noaa.gov. Technical point of contact for Coastal Remote Sensing is Kirk Waters, (843)-740-1227 or

Kirk.Waters@noaa.gov. Technical point of contact for Information Resources is Anne Ball, (843)-740-1229 or Anne.Ball@noaa.gov.

SUPPLEMENTARY INFORMATION: The Center is soliciting applications for federal assistance and funding will be contingent upon availability of FY 2003 funding availability. The following program areas are: Landscape Characterization and Restoration (LCR), Integration and Development (I&D), Outreach, Coastal Remote Sensing (CRS) and Information Resources (IR). This announcement provides guidelines for these program areas and includes details for the evaluation criteria, and selection procedures of each program. Selected recipients will enter into either a cooperative agreement with the Center or receive a grant depending upon the

amount of the Center's involvement in the project. Substantial involvement means a cooperative agreement, while independent work requires a grant.

All applicants are required to submit a NOAA grants application package and project proposal. The standard NOAA grants application package (which includes forms SF-424, SF-424A, SF-424B, CD-511, CD-512, and SF-LLL) can be obtained from the NOAA grants Website at <http://www.rdc.noaa.gov/grants/pdf/>. Funding will be subject to the availability of federal appropriations. Applicants are required to prepare separate packages for each proposal submitted.

Authority

Statutory authority for these programs is provided under 16 U.S.C. Sec. 1456 c (Technical Assistance); 15 U.S.C. Sec. 1540 (Cooperative Agreements); 33 U.S.C. Sec. 1442 (research program respecting possible long-range effects of pollution, over fishing, and man-induced changes of ocean ecosystems); 33 U.S.C. Sec. 883a (surveys and other activities); 33 U.S.C. Sec. 883b (dissemination of data); 33 U.S.C. Sec. 883c (geomagnetic data collection, correlation, and dissemination); and 33 U.S.C. Sec. 883d (improvement of methods, instruments, and equipments; investigations and research). *CFDA Number: 11.473—NOAA Coastal Services Center.*

General Background

Guiding the conservation and management of coastal resources is a primary function of NOAA. NOAA accomplishes this goal through a variety of mechanisms, including collaboration with the coastal resource management programs of the Nation's states and territories. The mission of the NOAA Coastal Services Center is to support the environmental, social, and economic well being of the coast by linking people, information, and technology. The goal of the Center is to build capabilities throughout the nation to address pressing issues of coastal health and change by promoting coastal resource conservation and efficient and sustainable commercial and residential development.

Landscape Characterization and Restoration (LCR)—Environmental Characterization for a United States Estuary, Watershed, or Special Management Area in the Southern United States or the Caribbean

Project Description

The Center seeks proposals for a 2-year cooperative agreement under

which a cooperator and the Center will jointly develop a digital information resource for a U.S. estuary, watershed, or special management area in the Southeastern U.S. or the Caribbean, located entirely or in part within North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, the U.S. Virgin Islands, or Puerto Rico. The information resource must focus on one or more resource management needs of the chosen estuary, watershed, or special management area and must emphasize examinations of ecosystem function through the integration of physical, ecological, and socioeconomic information and analyses. The cooperator will choose the management needs that will be focused on: for example, a regional habitat restoration plan, non-point source pollution management plan, long-term dredged material management plan, species recovery plan, or detailed environmental description. The information resource must clearly help managers make resource management, regulatory, or land-use planning decisions. In fact, it is suggested, but not required, that the project result in the creation of an interactive decision support tool. Total anticipated funding for a project is \$300,000 over two years and is subject to the availability of FY 2003 and FY 2004 appropriations. No more than two awards are anticipated from this announcement.

Background

This announcement is a call for proposals for work under the Center's Landscape Characterization and Restoration Program. The program's goal is to help Federal, state, and local resource managers include ecosystem processes in their resource management, regulatory, and land-use planning decisions. The program and program partners will work towards this goal by examining interrelationships among ecological, land use, human demographic, and socioeconomic trends and by developing tools needed to reflect those relationships in the development of management practices. The program's principal products are environmental characterizations that integrate the ecological, geophysical, and socioeconomic information and analyses that are required to address the management needs identified by cooperators. Final products are in a digital format and are distributed via CD-ROM and the Internet and include a spatial database, a customized Geographic Information System interface, and an interactive decision support tool. Final products also

include a narrative that describes in detail the focal management needs, how the accompanying information was used to examine potential solutions, and how the overall product can be used in future examinations. The program and its cooperators are currently working on, or have completed, characterizations of Otter Island (South Carolina), the ACE Basin (South Carolina), Kachemak Bay (Alaska), Rookery Bay/Belle Meade (Florida), coastal Rhode Island, the central California coast, and northern Puget Sound. Overviews of the program and these projects are available through the Internet at <http://www.csc.noaa.gov/lcr/>.

Roles and Responsibilities

By working in a cooperative partnership, the unique skills, capabilities, and experiences of the Center and the cooperator will be combined to offer an opportunity for each organization to further its goals. In their proposals, potential cooperators shall explicitly propose the respective roles and responsibilities of the Center and the cooperator. General areas of responsibilities that the Center has had in past projects include: development of spatial models, analyses, and data to address the identified management needs; guidance in the development of socioeconomic information and analyses; design of GIS and HTML architectures; and compilation of final products onto a CD-ROM and Internet site. Any questions about appropriate roles for the Center can be directed to Jeffery.Adkins@noaa.gov. General areas of responsibility that cooperators have had include: identifying the management needs that guide development of the information resource; identifying the information required to address the needs; developing partnerships with other members of the resource management community; developing and collecting the information (text, tables, graphics, charts, and maps) and tools (organizational structure and models) required to address the management needs; developing metadata; and determining how the products should be organized to maximize usefulness within the resource management community.

Project Proposals

The applicant must submit one original and two copies of the proposal(s) by 5 p.m. (Eastern time) on October 4, 2002 to the attention of Jeffery Adkins, Room 238A at the NOAA Coastal Services Center, 2234 South Hobson Avenue, Charleston, SC 29405-2413. In addition to the

proposal(s), the applicant must submit a complete NOAA grant application package (with signed originals). No e-mail or fax copies will be accepted. Project proposals must total no more than 10 pages (double spaced, 12-point font, and exclusive of appendices). Appendices should be limited to materials that directly support the main body of the proposal; e.g., support letters, resumes, lists of data sources, maps. All appendix material must be unbound. All proposals must include sections on the seven following topics:

1. Goal(s), Objective(s), and Geographic Area. Identify on a map and describe in the narrative the specific geographic area that will be examined. Identify the specific management objective(s) of the project, describing:

- The management goals that are currently not being achieved,
- How products from this cooperative agreement will significantly address that deficiency, and
- The benefits that will result to the cooperators, partners, public, and resource management community.

2. Background/Introduction. Provide sufficient background information for reviewers to independently assess the local significance and regional importance of the management objectives that will be addressed by the project. Summarize the status of any ongoing efforts by the cooperator and partners to address these objectives.

3. Audience. Identify potential users of the product, how those users will incorporate the product in their management of natural resources, and identify any training that will be needed for users to make full use of the information resource.

4. Project Description/Methodology. Provide a general work plan that:

- Outlines the expected products,
- Divides the project into discrete steps,
- Identifies critical decision points,
- Discusses any obstacles to completing the project that may require special planning,
- And explicitly outlines the respective roles of the cooperator, partners, and Center.

One of the initial tasks of the cooperative agreement will be for the Center and the cooperator to prepare a detailed task plan that explains how the resources of all parties will be leveraged to produce the products. The work plan requested for this part of the proposal should demonstrate that the cooperator and partners have sufficient local knowledge of the management problems to lead an innovative effort directed towards developing appropriate solutions. The product outline should

list the major topics (e.g., physical environment, economic trends) and immediate subordinate themes (e.g., geology, industry profile). The outline also should show how any decision support tools proposed are integrated with the other information in the characterization. The outline also should clearly allow reviewers to ascertain the balance between physical, ecological, socioeconomic, and geospatial components of the products. Provide a quality control plan that includes a plan for reviewing the content of the characterization.

5. Project Partners and Support. Identify project partners and describe their respective roles. When formal partnerships already exist, include letters from partners that demonstrate that they understand their role in the project and the authority of the lead agency in product development, and that they are willing to participate in that manner. When formal partnerships do not already exist, describe plans for developing them. Describe the resources the cooperators and partners have for conducting the project, including personnel qualifications (education, experience, and time available to work on the project), facilities, equipment, and, to the extent practicable, the information and tools already available. Describe how widely the project is supported within the resource management community and offer evidence of that support.

6. Milestone Schedule. List target milestones, time lines, and describe how each milestone addresses project objectives. The time period targeted for the award is approximately 24 months, but can vary depending on need. Based on our experience with past projects, we recommend the timeline include three months at the end to work with the Center on final assembly, review, and editing.

7. Project Budget. Provide a detailed budget description that follows the categories and formats in the NOAA grants package and a brief narrative justification of the budget.

Evaluation Criteria (With Weights) and Selection Process

Review panels, composed of two NOAA and at least two non-NOAA reviewers, will be established to assist in the evaluation of the proposals. Each member of the review panel will review independently each proposal using the evaluation criteria. The reviewers will not provide consensus advice. All proposals received will be ranked according to score and forwarded to the selecting official. The selecting official (Center Director) will use those scores

when he/she makes the final decision. The selecting official may also consider the following program policy factors in making the final selection decision: geographic and institutional balance. As a result, awards may not necessarily be made to the highest ranked applications. Final budget is negotiated after selection is made. Evaluation criteria are:

1. Significance (20 points)

- How well the proposal demonstrates the local significance and regional importance of the need(s) or management objective(s) that will guide development of the information resource. At a minimum, the proposal must identify management goals that are not currently being achieved, describe how products from this cooperative agreement will significantly address that deficiency, and state the benefits that will result to the public and resource management community.

2. Technical Approach (20 points)

- How well the proposal divides the project into discrete tasks that make effective use of the technical capabilities of the cooperator, partner(s), and Center. This criterion includes such factors as the technical merit of the process that the cooperator has outlined for developing the information resource and the perceived role for the Center in its development.

3. Comprehensiveness (20 points)

- How well the proposed work will integrate technology; socioeconomic, physical, and ecological information; and public participation to accomplish project goals and objectives. This criterion measures both the scope of the proposed project and the integration of its various components.

4. Outcomes (20 points)

- How well the applicant demonstrates that the project outcomes will significantly address the management issue(s) targeted by the project and that the collective resources of the applicant and partners will ensure projected outcomes are met.

5. Partnerships and Public Involvement (10 points)

- How well the proposal demonstrates through partnerships that the project is broadly supported by the resource management community; that a broad group of resource managers and constituents will benefit from the product(s) and contribute to their design and assembly; and that a broad group of resource managers will use the product(s). This criterion includes such factors as the inclusion of a formal

public involvement plan, a plan for managing the partnership team, and letters of support from users and partners.

6. Cost Efficiency (10 points)

- How well the applicant demonstrates that the budget is commensurate with project needs and that the partnerships employed will improve the overall cost effectiveness of the project and value of the products by contributing funds (cost-sharing), expertise, or other resources.

Selection Schedule

Proposals will be reviewed once during the year. The following schedule lists the dates for the project selection and award process for this cooperative agreement: Proposal Deadline (with completed grant package) October 4, 2002. Earliest Approximate Grant start date " March 3, 2003. Note: All deadlines are for receipt by close of business (5 p.m. Eastern time) on the dates identified. Receipt of proposal and grant package (with original signatures) will be time stamped. Unsuccessful applications will be destroyed by the Program Manager and not returned to the applicant.

Funding Availability

Specific funding available for awards will be finalized after NOAA funds for FY 2003 are appropriated. Total funding available for this cooperative agreement with the LCR program is anticipated to be \$300,000 over 2 years. Two awards are anticipated from this announcement. Publication of this document does not obligate NOAA to fund any specific grant or cooperative agreement or to award all or any part of the available funds.

Cost Sharing

There is no requirement for cost sharing in response to these guidelines, however, proposals that include cost sharing will likely score highly under the evaluation criterion that examines cost efficiency.

Eligibility Criteria

Eligible applicants are institutions of higher education, hospitals, other non-profits, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, international organizations, and state, local and Indian tribal governments. Federal agencies or institutions are not eligible to receive Federal assistance under this announcement, but may be project partners.

Note: Federal agencies or institutions who are project partners must demonstrate that they have legal authority to receive funds from outside sources in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

Authority

Statutory authority for these programs is provided under 16 U.S.C. 1456c (Technical Assistance); and 33 U.S.C. 1442 (research program respecting possible long-range effects of pollution, overfishing, and man-induced changes of ocean ecosystems).

Integration and Development (I&D)—Applications of Spatial Technology for Coastal Management

Project Description

The Center seeks proposals for a one to two year cooperative agreement under which a cooperator and the Center will jointly develop a technical project related to one of the Center's main theme areas (i.e., smart coastal growth, habitat protection and management, coastal hazards, or Coastal National Spatial Data Infrastructure (NSDI). Projects within the smart coastal growth theme <<http://www.csc.noaa.gov/themes/communities/>> assist communities in their efforts to incorporate smart growth concepts into their planning and decision-making processes. Habitat related projects <<http://www.csc.noaa.gov/themes/habitat/>> seek to provide coastal managers with information and tools to integrate physical, ecological, economic, and social components into habitat protection and management. Projects within the coastal hazards theme <<http://www.csc.noaa.gov/themes/coasthaz/>> focus on reducing the environmental, social, and economic impacts from coastal hazards by providing information and tools that facilitate increased decision-support capabilities for coastal managers. Any of these issues would be well supported by incorporating concepts related to the Coastal NSDI <<http://www.csc.noaa.gov/themes/nsdi/>>. The NSDI is a nationwide effort to improve the utilization of geospatial data within the United States, focusing on data acquisition, processing, storage, distribution, ease of use, and inclusion in the decision-making process. NSDI has control of geospatial data. Proposals must relate to the general theme areas as defined above. Applicants are encouraged to focus on a particular issue that is impacting their community and formulate a more efficient or

innovative approach toward the management of the issue. All project proposals that meet the topic criteria will be reviewed for technical merit and management relevance.

The goal of the Center's Integration and Development (I&D) program is to provide relevant, easily accessible spatial data, tools, and support services to the coastal resource management community. The program and program partners will work towards this goal by examining the issue, as defined in the project proposal, and working with the impacted community or communities to design and develop a product that addresses local needs and skill sets, while considering its broader applicability to other states or regions.

It is expected that this funding will support agencies and organizations with proven abilities to implement practical solutions on state and local levels. Maximum anticipated funding for Fiscal Year (FY) 2003 is \$250,000 for a two-year period and is subject to the availability of FY 2003 appropriations. It is intended that this funding will be distributed among multiple projects in the form of a cooperative agreement. The award level is contingent on methodology, level of detail, and both the technical and geographic scope of the project.

Background

The Center's I&D program's principal products seek to link the technical benefits of geographic information systems (GIS) with the needs of the coastal resource management community to enhance visualization and decision making capabilities. Final products typically are in a digital format and distributed via a training module, CD-ROM, or the Internet. Products often include a spatial database, a customized geographic information system interface, and a narrative that provides a detailed overview of the focal management issues, how the accompanying information was used to examine potential solutions, how the product can be applied to other coastal areas, and how the overall product can be used in future decision-making. An overview of the program, including information on its past and current projects, is available through the Internet at <<http://www.csc.noaa.gov/id/>>.

This FY 2003 announcement is intended to accommodate a broad range of issues. The program's objective in considering a broad range of issues is to allow individual coastal communities the opportunity to propose projects that speak to the most relevant or urgent issues for their area and to guide

discussion relative to the development of innovative approaches for addressing these issues.

Roles and Responsibilities

By establishing a cooperative partnership, the unique skills, capabilities, and experiences of the Center and the cooperator will be combined to offer an opportunity for each organization to further its goals. In order to clearly define the nature of this relationship, the proposal shall explicitly state the respective roles and responsibilities of the Center and the cooperator. Also, the work plan that is outlined within the proposal should demonstrate that the cooperator and partners have sufficient local knowledge of the management problem to devise an effective and systematic approach towards the development of appropriate solutions. Once the award has been made, a primary task for the Center and the cooperator will be to collectively review and develop the final implementation plan to describe how the resources of all parties will be leveraged to produce the final products, the time line for the project, and the process for accomplishing project tasks.

The Center's technical role in past projects has generally included, but is not limited to, the development of spatial tools, analyses, and data to address a variety of management issues; the design of geographic information systems (GIS) and Web-based architectures; and the compilation of final products into a training module, CD-ROM, or Web site. More information regarding the degree of involvement or potential role of the Center in a given project may be found at <http://www.csc.noaa.gov/id/>. Any questions about appropriate roles for the Center can be directed to James.L.Free@noaa.gov.

General areas of responsibility that cooperators have had in the past have included the following: identifying the management issues that guide development of the information resource; identifying the information needed to address the issues; developing partnerships with other members of the coastal management community; developing, collecting, and synthesizing the information (e.g., spatial data, text, tables, graphics, charts, and maps) and tools needed to address the management issues; developing metadata; and determining how the products should be organized to maximize usefulness within the coastal management community. It is anticipated the cooperator will participate in the development of the

final product design and implementation.

Project Proposals

The applicant must submit one original and two copies of the proposal(s) by 5 p.m. (Eastern time) on October 4, 2002 to the attention of James Lewis Free, Room 236A at the NOAA Coastal Services Center, 2234 South Hobson Avenue, Charleston, SC 29405-2413. In addition to the proposal(s), the applicant must submit a complete NOAA grant application package (with signed originals). No e-mail or fax copies will be accepted. All project proposals must total no more than 10 pages (double spaced, 10 or 12-point fonts, and exclusive of appendices). Appendices should be limited to materials that directly support the main body of the proposal (e.g., support letters, resumes, lists of data sources, maps). Letters of support may be mailed separately, but must be received by the October 4, 2002, deadline. All appendix material must be unbound. All projects proposals must include sections on the five following topics:

1. **Project Background/Introduction.** Briefly discuss the critical coastal management issue addressed within the proposal, as well as the data and/or analyses required to address this issue. Identify the basic project goals and any objectives. Discuss in the applicability of the issue and anticipated final product to a broader range of customers or areas.

2. **Project Description/Methodology.** Address the general work plan and deliverables. Methodology should address specific methods to address the defined problem, including a description of the types of technology or software that will be applied. Database format must be adequately described (if appropriate) and include a supplemental descriptor file or metadata that contains the information necessary for completing an FGDC-compliant metadata record for any data that are created or used within the project.

3. **Project Partners and Subcontractors.** Identify any project partners and describe their respective roles. When formal partnerships already exist, include letters from partners that demonstrate that they understand their role in the project and the authority of the lead agency in product development, and that they are willing to participate in that manner. When formal partnerships do not already exist, describe plans for developing them. Describe the resources available to cooperators and partners to conduct the project, including personnel qualifications (*i.e.*, education,

experience, and time available to work on the project), facilities, equipment, and, to the extent practicable, the information and tools already available. Describe how widely the project is supported within the resource management community and offer evidence of that support.

4. **Milestone Schedule.** List target milestones and their respective time lines.

5. **Project Budget.** Proposals should provide a detailed budget breakdown that follows the categories and formats in the NOAA grants package and a brief narrative that justifies each item.

Evaluation Criteria (With Weights) and Selection Process

Review panels, composed of two NOAA and at least two non-NOAA reviewers, will be established to assist in the evaluation of the proposals. Each member of the review panel will review independently each proposal using the evaluation criteria. The reviewers will not provide consensus advice. All proposals received will be ranked according to score and forwarded to the selecting official. The selecting official (Center Director) will use those scores when he/she makes the final decision. The selecting official may also consider the following program policy factors in making the final selection decision: geographic and institutional balance. As a result, awards may not necessarily be made to the highest ranked applications. Final budget is negotiated after selection is made. Evaluation criteria are:

1. Significance (25 points)

- How well the proposal demonstrates the local significance and regional importance of the issue(s) or management objective(s) that will guide development of the project. At a minimum, the proposal must identify management goals that currently are not being achieved, describe how products from this project will significantly address that deficiency, and state the benefits that will result to the public and coastal management community.

2. Technical Approach (20 points)

- How well the proposal divides the project into discrete tasks that make effective use of the technical capabilities of the cooperator, partner(s), and the Center. This criteria includes such factors as the technical merit of the process that the cooperator has outlined for developing the information resource and the perceived role for the Center in its development.

3. Outcomes (20 points)

- How well the applicant demonstrates that the project outcomes will significantly address the management issue(s) targeted by the project and that the collective resources of the applicant and partners will ensure projected outcomes are met.

4. Innovation (15 points)

- How well the proposed work takes an innovative approach to the application and integration of technology, spatial data, and policy to address issues and accomplish project goals and objectives.

5. Partnerships (15 points)

- How well the proposal demonstrates: that the project is broadly supported by the coastal management community; that a broad group of coastal managers and constituent will benefit from contributing to design and assembly of product(s); and that a broad group of coastal managers will use the product(s).

6. Cost Efficiency (5 points)

- Points will be awarded in proportion to the amount of cost sharing proposed. Applicant will have to cost share at least 10 percent of the Federal direct costs proposed to receive 1 point, 20 percent to receive 2 points, 30 percent to receive 3 points, 40 percent to receive 4 points, and 50 percent to receive 5 points.

Selection Schedule

Proposals will be reviewed once during the year. The following schedule lists the dates for the project selection and award process for cooperative agreements: Proposal Deadline (with completed grant package)—October 4, 2002. The review process will take up to three months, and applicants will not be notified of the status of their application until the review process is completed. Earliest Approximate Grant Start Date—March 3, 2003.

Note: All deadlines are for receipt by close of business (5 p.m. Eastern time) on the dates identified. Receipt of proposal and grant package (with original signatures) will be time stamped. Unsuccessful applications will be destroyed by the Program Manager and not returned to the applicant.

Funding Available

Specific funding available for awards will be finalized after NOAA funds for FY 2003 are appropriated. Total funding available for this cooperative agreement with the Integration and Development program is anticipated to be no more than \$250,000 and funding will be

distributed among multiple projects. Publication of this document does not obligate NOAA to fund any specific grant or cooperative agreement or to award all or any parts of the available funds.

Eligibility Criteria

Eligible applicants are institutions of higher education, hospitals, other non-profits, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, international organizations, and state, local and Indian tribal governments. Federal agencies or institutions are not eligible to receive Federal assistance under this announcement, but may be project partners. Note: Federal agencies or institutions who are project partners must demonstrate that they have legal authority to receive funds from outside sources in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

Authority

Statutory authority for these programs is 33 U.S.C. 883a (surveys and other activities), 33 U.S.C. 883c (geomagnetic data; collection, correlation, and dissemination) and 16 U.S.C. 1456c (Technical Assistance).

Outreach—Special Projects

Project Description

The Center seeks grant proposals for special technical, management, or planning projects that relate to growth management in coastal areas or human use of coastal resources to organizations across the United States with proven abilities to implement practical solutions at a state and local level. Proposed study topics must relate to growth management in coastal areas or to human use of coastal resources. All project proposals received that meet the topic criteria will be reviewed for technical merit and management relevance.

Background

The Center conducts a variety of projects that directly apply to the state and local coastal management community. The goal of Special Projects is to provide assistance to the local coastal management community for technical or management issues on specific topics relating directly to growth management in coastal areas or human use of coastal resources.

Project Proposals

The applicant must submit one original and two copies of the proposal(s) by 5 p.m. (Eastern time) on October 4, 2002 to the attention of Jan Kucklick, Room 142 at the NOAA Coastal Services Center, 2234 South Hobson Avenue, Charleston, SC 29405–2413. In addition to the proposal(s), the applicant must submit a complete NOAA grants application package (with signed originals). No e-mail or fax copies will be accepted. All project proposals must total no more than 10 pages (double spaced, 12-point font, and exclusive of appendices). Appendices should be limited to materials that directly support the main body of the proposal; e.g., support letters, resumes, lists of data sources, maps. All appendix material must be unbound. All project proposals must include sections on the seven following topics:

1. Goals and Objectives. Identify broad project goals and quantifiable objectives.
2. Background/Introduction. State the problem and summarize existing efforts at all levels.
3. Audience. Describe specifics of how the project will contribute to improving or resolving an issue with the primary target audience. The target audience must be explicitly stated.
4. Project Description/Methodology. Describe the specifics of the projects (3 page maximum).
5. Project Partners. Identify project partners and their respective roles.
6. Milestones and Outcomes. List target milestones, Time lines, and desired outcomes in terms of products and services.
7. Project Budget. Provide a detailed budget breakdown that follows the categories and formats in the NOAA grant package and a brief narrative that justifies each item.

Evaluation Criteria (With Weights) and Selection Process

Review panels, composed of two NOAA and at least two non-NOAA reviewers, will be established to assist in the evaluation of the proposals. Each member of the review panel will review independently each proposal using the evaluation criteria. The reviewers will not provide consensus advice. All proposals received will be ranked according to score and forwarded to the selecting official. The selecting official (Center Director) will use those scores when he/she makes the final decision. The selecting official may also consider the following program policy factors in making the final selection decision: geographic and institutional balance. As

a result, awards may not necessarily be made to the highest ranked applications. Final budget is negotiated after selection is made. Evaluation criteria are:

1. Management Relevance (30 points)

- How well does the proposed project (directly or indirectly) address a critical national, regional, state, or local management need relating directly to growth management of coastal areas or human use of coastal resources?

- How well does the project involve partnerships with the state coastal management agency, National Estuarine Research Reserve, and/or National Marine Sanctuary?

- How clearly does the proposed project define the management audience and do the products have clearly defined users?

2. Technical Merit (35 points)

- How technically sound is the approach?

- How well does the proposed project build on existing knowledge?

- How clear and concise are the project goals and objectives?

- How well does the proposed project provide for long-term maintenance or sustainability of products and services?

- How innovative is the approach?

3. Applicability and Effectiveness of Products and Their Delivery (25 points)

- How well does the proposed project produce useful (and easily used) products, services, or an understanding for the target audience and users?

- How likely is the project time line and project design to be flexible and responsive to public and user input?

- Is an evaluation process built into the project? How appropriate is it?

4. Efficiency and Overall Qualifications (10 points)

- How is the budget commensurate with the project needs?

- How capable are the proposers of conducting a project of the scope and scale proposed? (i.e., Are there adequate professional, facility, and administrative capabilities?)

Selection Schedule

Proposals will be reviewed once during the year. The following schedule lists the dates for the project selection and award process for grants and/or cooperative agreements: Proposal Deadline (with completed grant package) October 4, 2002. Earliest Appropriate Grant Start Date—March 3, 2003. Note: All deadlines are for receipt by close of business (5 p.m. Eastern time) on the dates identified. Receipt of proposal and grant package (with original signatures) will be time

stamped. Unsuccessful applications will be destroyed by the Program Manager and not returned to the applicant.

Funding Availability

Specific funding available for awards will be finalized after NOAA funds for FY 2003 are appropriated. Anticipated funding in FY 2003 will be between \$50,000 and \$300,000. Two to six projects will be funded in the \$20,000 to \$25,000 range for 1 year with the potential for option years (depending on the availability of funds through the federal appropriation process). One or two projects may be considered at annual levels above \$25,000 depending on the availability of funds. Publication of this document does not obligate NOAA to fund any specific grant or cooperative agreement or to award all or any part of the available funds.

Cost Sharing

There is no requirement for cost sharing in response to this program announcement and no additional weight will be given to proposals with cost sharing.

Eligibility Criteria

Eligible applicants are institutions of higher education, hospitals, other non-profits, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, international organizations, and state, local and Indian tribal governments. Federal agencies or institutions are not eligible to receive Federal assistance under this announcement, but may be project partners.

Note: Federal agencies or institutions who are project partners must demonstrate that they have legal authority to receive funds from outside sources in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

Authority

Statutory Authority for these programs is provided under 16 U.S.C. 1456C (Technical Assistance).

Outreach—Special Projects for the Pacific Islands

Project Description

The Center seeks grant proposals for special technical, management, or planning projects that directly apply to the goals of the Pacific Island coastal management community to organizations with proven abilities to implement practical solutions in the Pacific Islands at a state and local level. Projects topics should relate to one or

more of the four themes of the Coastal Services Center: Habitat, Hazards, Smart Coastal Growth, or Coastal National Spatial Data Infrastructure (CNSDI).

Background

The Center conducts a variety of projects that directly apply to the state and local coastal management community. The goal of this program is to provide assistance to the Pacific Island coastal management community for technical or management issues on a very broad range of topics related to coastal resources and their wise management.

Project Proposal

The applicant must submit one original and two copies of the proposal(s) by 5 p.m. (Eastern time) on October 4, 2002 to the attention of Jan Kucklick, Room 142 at the NOAA Coastal Services Center, 2234 South Hobson Avenue, Charleston, SC 29405–2413. In addition to the proposal(s), the applicant must submit a complete NOAA grants application package (with signed originals). No e-mail or fax copies will be accepted. All project proposals must total no more than 10 pages (double spaced, 12-point font, and exclusive of appendices). Appendices should be limited to materials that directly support the main body of the proposal; e.g., support letters, resumes, lists of data sources, and maps. All appendix materials must be unbound. All projects proposals must include sections on the seven following topics:

1. Goals and Objectives. Identify broad project goals and quantifiable objectives.

2. Background/Introduction. State the problem and summarize existing efforts at all levels.

3. Audience. Describe specifics of how the project will contribute to improving or resolving an issue with the primary target audience. The target audience must be explicitly stated.

4. Project Description/Methodology. Describe the specifics of the projects (3 page maximum).

5. Project Partners. Identify project partners and their respective roles.

6. Milestones and Outcomes. List target milestones, time lines, and desired outcomes in terms of products and services.

7. Project Budget. Provide a detailed budget breakdown that follows the categories and formats in the NOAA grant package and a brief narrative that justifies each item.

Evaluation Criteria (With Weights) and Selection Process

Review panels, composed of two NOAA and at least two non-NOAA reviewers, will be established to assist in the evaluation of the proposals. Each member of the review panel will review independently each proposal using the evaluation criteria. The reviewers will not provide consensus advice. All proposals received will be ranked according to score and forwarded to the selecting official. The selecting official (Center Director) will use those scores when he/she makes the final decision. The selecting official may also consider the following program policy factors in making the final selection decision: geographic and institutional balance. As a result, awards may not necessarily be made to the highest ranked applications. Final budget is negotiated after selection is made. Evaluation criteria are:

1. Management Relevance (30 points)

- How well does the proposed project (directly or indirectly) address a critical national, regional, state, or local management need relating directly to growth management of coastal areas or human use of coastal resources?

- How well does the project involve partnerships with the state coastal management agency, National Estuarine Research Reserve, and/or National Marine Sanctuary?

- How clearly does the proposed project define the management audience and do the products have clearly defined users?

2. Technical Merit (35 points)

- How technically sound is the approach?

- How well does the proposed project build on existing knowledge?

- How clear and concise are the project goals and objectives? Does the proposed project provide for long-term maintenance or sustainability of products and services?

- How innovative is the approach?

3. Applicability and Effectiveness of Products and Their Delivery (25 points)

- How well does the proposed project produce useful (and easily used) products, services, or an understanding for the target audience and users?

- How likely is the project time line and project design to be flexible and responsive to public and user input?

- Is an evaluation process built into the project? How appropriate is it?

4. Efficiency and Overall Qualifications (10 points)

- How is the budget commensurate with the project needs?

- How capable are the proposers of conducting a project of the scope and scale proposed (i.e., Are there adequate professional, facility, and administrative capabilities?)

Selection Schedule

Proposals will be reviewed once during the year. The following schedule lists the dates for the project selection and award process for grants: Proposal Deadline (with completed application package)—October 4, 2002. Earliest Approximate Grant Start Date—March 3, 2003. Note: All deadlines are for receipt by close of business (5 p.m. Eastern time) on the dates identified. Receipt of proposal and grant package (with original signatures) will be time stamped. Unsuccessful applications will be destroyed by the Program Manager and not returned to the applicant.

Funding Availability

Specific funding available for awards will be finalized after NOAA funds for FY 2003 are appropriated. Anticipated funding in FY 2003 will be between \$50,000 and \$300,000. Projects will be funded in the \$25,000 to \$75,000 range for 1 year with the potential for options years (depending on the availability of funds through the Federal appropriation process). Up to three projects per year may be considered at annual levels above \$75,000 depending on the availability of funds. Publication of this document does not obligate NOAA to fund any specific grant or cooperative agreement or to award all or any part of the available funds.

Cost Sharing

There are no requirements for cost sharing in response to this program announcement and no additional weight will be given to proposals with cost sharing.

Eligibility Criteria

Eligible applicants are institutions of higher educations, hospitals, other non-profits, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, international organizations, and state, local and Indian tribal governments. Federal agencies or institutions are not eligible to receive Federal assistance under this notice, but may be project partners.

Note: Federal agencies or institutions who are project partners must demonstrate that they have legal authority to receive funds from outside sources in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C 1535) is not an appropriate legal basis.

Authority

Statutory Authority for these programs is provided under 16 U.S.C. 1456C (Technical Assistance).

Outreach—Technical Assistantship for the Pacific Islands

Project Description

The Center seeks proposals for the development and administration of a two-year cooperative agreement to support post-graduate students working for the Pacific Island coastal zone management programs. This includes those programs in Hawaii, Guam, American Samoa, and the Commonwealth of the Northern Marianas. In FY 2003, the Center expects to award a cooperative agreement to an organization with proven abilities to recruit, select, place and administer assistants working in these four coastal management programs. All project proposals must define how students will be selected and placed, and must include a mechanism to ensure that the skills and expertise of the selected students match the needs and requirements of the Pacific Island coastal zone management program.

This would be a cooperative agreement between the Center and the cooperator for two years (to house one class of assistants) with the option to extend for four years (depending on the availability of funds through the federal appropriations process).

Background

The goal of this program is to provide assistance to the Pacific Island coastal zone management agencies on technical and management issues that directly relate to the agencies' needs and requirements. This program is administratively and programmatically distinct from the NOAA Coastal Management Fellowship program.

Roles and Responsibilities

These projects are intended to be cooperative in nature. The following items identify the minimum project participation expected by the Center and the project applicant. Additional roles and responsibilities should be identified by the applicant.

Coastal Services Center shall have primary responsibility for ensuring that the needs and requirements of the selected Pacific Island coastal zone management agency are being met through this assistantship program.

1. The Coastal Services Center Will:

- Provide information to the applicant on the needs of the Pacific

Island Coastal zone management agency prior to the recruiting of the assistants.

- Serve as a reviewer on all student applications to help ensure that the selected students' expertise match with the needs of the Pacific Island coastal zone management programs.

2. The Applicant Shall Have Primary Responsibility for the Following Activities Associated With This Program

- Design process for recruitment and selection

- Announce and select assistants.
- Support and administer assistants.

This shall include all activities related to the financial support and administration of the assistants. These activities include arranging for and supporting medical insurance, worker's compensation insurance, state and federal income tax withholdings, and FICA withholdings; coordinating and providing reimbursement for moving expenses, salary disbursement to the assistants; and coordinating and supporting and travel for the assistants.

3. The Coastal Services Center and the Applicant Shall Share Joint Responsibility for the Following Activities Associated With This Program

- Publicize the program—This shall include general announcement and publicity measures to provide general information about the program, specific announcements of the selection processes, and specific announcements of the results of the selection processes. Newsletters, facts sheets, Web sites, and conference poster sessions should all be considered potential publicity mechanisms.

- Solicit other partners—To ensure the continued success and further development of the program, both organizations should consider recruiting other partners to provide financial support and opportunities for future assistants.

Project Proposals

The applicant must submit one original and two copies of the proposal(s) by 5 p.m. (Eastern time) on October 4, 2002 to the attention of Jan Kucklick, Room 142 at the NOAA Coastal Services Center, 2234 South Hobson Avenue, Charleston, SC 29405-2413. In addition to the proposal(s), the applicant must submit a complete NOAA grant application package (with signed originals). No e-mail or fax copies will be accepted. All project proposals must total no more than 10 pages (double spaced, 12-point font, exclusive of appendices). Appendices

should be limited to materials that directly support the main body of the proposal; e.g., support letters, resumes, lists of data sources, maps. All appendix material must be unbound. All projects proposals must include sections on the seven following topics:

1. Goals and Objectives. Identify broad project goals and quantifiable objectives.

2. Background/Introduction. State the problem and summarize existing efforts at all levels.

3. Audience. Describe specifics of how the project will contribute to improving or resolving an issue with the primary target audience. The target audience must be explicitly stated.

4. Project Description/Methodology. Describe the specifics of the process for development and administration (4 page maximum).

5. Project Partners—Identify project partners and their respective roles.

6. Milestones and Outcomes. List target milestones, time lines, and desired outcomes in terms of products and services.

7. Project Budget. Proposal should provide a detailed budget breakdown that follows the categories and formats in the NOAA grant package and a brief narrative that justifies each item. Salary, per diem, travel, and benefits of selected students must be included in the budget.

Evaluation Criteria (With Weights) and Selection Process

Review panels, composed of two NOAA and at least two non-NOAA reviewers, will be established to assist in the evaluation of the proposals. Each member of the review panel will review independently each proposal using the evaluation criteria. The reviewers will not provide consensus advice. All proposals received will be ranked according to score and forwarded to the selecting official. The selecting official (Center Director) will use those scores when he/she makes the final decision. The selecting official may also consider the following program policy factors in making the final selection decision: geographic and institutional balance. As a result, awards may not necessarily be made to the highest ranked applications. Final budget is negotiated after selection is made. Evaluation criteria are:

1. Technical Relevance (70 points)

- How well does the approach identify an effective mechanism for defining how students will be selected and placed?
- How well does the approach identify an effective mechanism for determining where students are placed?

- How well does the approach identify an effective mechanism for ensuring that the skills and expertise of the selected students match the needs and requirements of the selected Pacific Island coastal zone management program?

- Is an evaluation process built into the project? How appropriate is it?

- Will the project involve partnerships with the state coastal management agency, National Estuarine Research Reserve, and/or National Marine Sanctuary?

2. Efficiency and Overall Qualifications (30 points)

- How is the budget commensurate with the project needs? Is it based on existing knowledge?

- How capable are the proposers of conducting a project of the scope and scale proposed? (*i.e.*, Are there adequate professional, facility, and administrative capabilities?)

Selection Schedule

Proposals will be reviewed once during the year. The following schedule lists the dates for the project selection and award process for cooperative agreements: Proposal Deadline (with complete grant package) October 4, 2002. Earliest Approximate Grant Start Date—March 3, 2003.

Note: All deadlines are for receipt by close of business (5 P.m. Eastern time) on the dates identified. Receipt of proposal and grant package (with original signatures) will be time stamped. Unsuccessful applications will be destroyed by the Program Manager and not returned to the applicant.

Funding Available

Specific funding available for awards will be finalized after NOAA funds for FY 2003 and FY 2004 are appropriated. Anticipated funding for this cooperative agreement in FY 2003 will be between \$250,000 and \$400,000. This will cover one class of assistants for one year. A class of assistants is selected every two years. Applicants must provide out year estimates of budget for up to three additional years (this would cover the selection and placement of a total of 2 classes of assistants). Publication of this document does not obligate NOAA to fund any specific grant or cooperative agreement or to obligate all or any parts of the available funds.

Cost Sharing

There is no requirement for cost sharing in response to this program announcement and no additional weight will be given to proposals with cost sharing.

Eligibility Criteria

Eligible applicants are institutions of higher educations, hospitals, other non-profits, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, international organizations, and state, local and Indian tribal governments. Federal agencies or institutions are not eligible to receive Federal assistance under this notice, but may be project partners. Note: Federal agencies or institutions who are project partners must demonstrate that they have legal authority to receive funds from outside sources in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C 1535) is not an appropriate legal basis.

Authority

Statutory Authority for these programs is provided under 16 U.S.C. Sec 1456c (Technical Assistance) and 15 U.S.C. Sec. 1540 (Cooperative Agreements).

Coastal Remote Sensing—Use of Commercial Remote Sensing Products To Solve Coastal Management Issues

Project Description

The Center seeks proposals on applications of remotely sensed coastal spatial data to solve a coastal resource management issue. The proposals are for a 2-year cooperative agreement under which the Center will acquire commercial remote sensing imagery and/or products, and the cooperator and the Center will apply acquired data to the identified issue. The cooperator must show how their management issue will benefit substantially by the inclusion of remotely sensed data. The remote sensing data or products must clearly help managers make resource management, regulatory, or land-use planning decisions. The Center will acquire the remotely sensed data or derived products during the first year of the agreement. The Center is primarily interested in applications of land cover products, topography, and other emerging technologies (e.g. LIDAR, IfSAR, or airborne digital imagery). Both terrestrial and aquatic issues are of interest. The Center shall acquire the remote sensing resources during the first year and the cooperator is expected to make use of the acquired resources during the second year.

Anticipated funding is \$10,000 per award over the two year period for support of the cooperative agreement. All funding is subject to the availability

of FY 2003 and 2004 appropriations. Between one and five awards are anticipated from this announcement. It is anticipated that approximately \$1,500,000 will be spent by the Center on the commercial acquisition of remote sensing data/products during FY03.

This announcement is a call for proposals for work under the Center's Coastal Remote Sensing Program. The program's goal is to help federal, state, and local resource managers use remote sensing to support their decision-making processes. This cooperative agreement will work toward this goal by providing access to remote sensing resources that are otherwise beyond the budget of coastal resource managers.

Background

The Center conducts a variety of projects that directly apply to the state and local coastal resource management community. The goal of the Coastal Remote Sensing (CRS) program is to link coastal resource managers with meaningful data, information and products derived from remote sensing technology. Through partnerships with public and private organizations, CRS strives to deliver high-quality products useful for coastal resource management decision-making.

In FY 2003, the Center expects to award grants and cooperative agreements to organizations across the United States with proven abilities to implement practical solutions at a state and local level. Proposed topics must relate to coastal decision support using remotely sensed information. All project proposals received that meet the topic criteria will be reviewed for technical merit and management relevance.

Roles and Responsibilities

By working in a cooperative partnership, the unique skills, capabilities, and experiences of the Center and the cooperator will be combined to offer an opportunity for each organization to further its goals. In their proposals, potential cooperators shall explicitly propose the respective roles and responsibilities of the Center and the cooperator. Part of the Center's role will be to acquire the remote sensing resources. General areas of responsibilities that the Center can offer include: remote sensing technical expertise; spatial modeling; data visualization; data fusion; and compilation of final products. Any questions about appropriate roles for the Center can be directed to Kirk.Waters@noaa.gov.

Potential general areas of responsibility anticipated for cooperators include: identifying the

management issues benefitting from remote sensing resources; identifying the information needed to address the issues; developing partnerships with other members of the coastal management community; developing and collecting the information (text, tables, graphics, charts, and maps) and tools needed to address the management issues; developing metadata; and determining how the products should be organized to maximize usefulness within the coastal management community.

Project Proposals

The applicant must submit one original and two copies of the proposal(s) by 5 p.m. (Eastern time) on October 4, 2002 to the attention of Kirk Waters, Room 103 at the NOAA Coastal Services Center, 2234 South Hobson Avenue, Charleston, SC 29405-2413. In addition to the proposal(s), the applicant must submit a complete NOAA grant application package (with signed originals). No e-mail or fax copies will be accepted. All project proposals must total no more than 10 pages (double spaced, 12-point font, exclusive of appendices). Appendices should be limited to materials that directly support the main body of the proposal; e.g., support letters, resumes, lists of data sources, maps. All appendix material must be unbound. All project proposals must include sections on the seven following topics:

1. Goals and Objectives. Describe specifically how remote sensing data will be used in your decision making process for the management issue.
2. Background/Introduction. Provide background on this problem and some perspective on existing understanding of this issue.
3. Audience. Describe how the results of this project can be implemented at the state coastal resource management level.
4. Project Description/Methodology. Describe the specifics of the project (4-5 page maximum). This must include information regarding the remote sensing data needs (e.g. spatial, temporal, and/or spectral resolution, accuracy required, etc.).
5. Project Partners. Identify project partners and their respective roles.
6. Milestones and Outcomes. List target milestones, time lines, and desired outcomes in terms of products and/or services.
7. Project Budget. Proposal should provide a detailed budget breakdown that follows the categories and formats in the NOAA grant package and a brief narrative that justifies each item. This budget should not include the estimated

cost of the remote sensing resources. It is recommended that the proposers do estimate the cost of the remote sensing resources to ensure their proposal is within the scope of this announcement.

Evaluation Criteria (With Weights) and Selection Process

Review panels, composed of two NOAA and at least two non-NOAA reviewers, will be established to assist in the evaluation of the proposals. Each member of the review panel will review independently each proposal using the evaluation criteria. The reviewers will not provide consensus advice. All proposals received will be ranked according to score and forwarded to the selecting official. The selecting official (Center Director) will use those scores when he/she makes the final decision. The selecting official may also consider the following program policy factors in making the final selection decision: geographic and institutional balance. As a result, awards may not necessarily be made to the highest ranked applications. Final budget is negotiated after selection is made. Evaluation criteria are:

1. Management Relevance (35 points)

- How well does the proposed project (directly or indirectly) address a critical national, regional, state, tribal or local management need that would clearly benefit from remote sensing data?
- How effectively does the project involve state coastal management agency, National Estuarine Research Reserve, or National Marine Sanctuary?
- How clearly does the proposed project define the management audience and do the products have clearly defined users?

2. Technical Merit (30 points)

- How technically sound is the approach?
- How clear and concise are the project goals and objectives?
- How integral are the remote sensing resources in addressing the management issue?
- How well defined and appropriate are the remote sensing data requirements to the management issue?

3. Applicability and Effectiveness of Products and Their Delivery (20 points)

- How useful and accessible will the proposed project's products or services be for the target audience and users?
- Is an evaluation process built into the project? How appropriate is it?

4. Efficiency and Overall Qualifications (10 points)

- How is the budget commensurate with the project needs?

- How capable are the proposers of conducting a project of the scope and scale proposed? (*i.e.*, Are there adequate qualified professional, facility, and administrative capabilities?)

5. Remote Sensing Cost Estimation(5 points)

- How reasonable is the cost estimate of the remote sensing resources required?
- If applicable, are multiple remote sensing methodologies considered?

Selection Schedule

Proposals will be reviewed once during the year. The following schedule lists the dates for the project selection and award process for cooperative agreements: Proposal Deadline (with completed grant package) October 4, 2002. Earliest Appropriate Grant Start Date—March 3, 2003.

Note: All deadlines are for receipt by close of business (5 p.m. Eastern time) on the dates identified. Receipt of proposal and grant package (with original signatures) will be time stamped. Unsuccessful applications will be destroyed by the Program Manager and not returned to the applicant.

Funding Availability

Specific funding available for awards will be finalized after NOAA funds for FY 2003 are appropriated. Anticipated funding is \$10,000 per award over a two-year period for support of cooperative agreements. Between one and five awards are anticipated from this announcement. Publication of this document does not obligate NOAA to fund any specific grant or cooperative agreement or to obligate all or any parts of the available funds.

Cost Sharing

There is no requirement for cost sharing in response to this program announcement, however, proposals that include cost sharing approaches will likely score highly under evaluation criteria that examines cost efficiency, especially proposals for cost sharing in the acquisition of the remote sensing resources.

Eligibility Criteria

Eligible applicants are institutions of higher education, other non-profits, commercial organizations, state, local and Indian tribal governments. Federal agencies or institutions are not eligible to receive Federal assistance under this announcement, but may be project partners. Note: Federal agencies or institutions who are project partners must demonstrate that they have legal authority to receive funds from outside sources in excess of their appropriation.

Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

Authority

Statutory Authority for these programs is provided under 16 U.S.C. 1456C (Technical Assistance).

Information Resources (IR)—Coastal Data and Information

Project Description

The Center seeks grant proposals for projects to make coastal data, products, and information available on-line using standard documentation formats and search technologies. Proposals may also include projects concerning the rescue of unique coastal data sets and the conversion to electronic media of coastal data, products, and information. The intent of this program is to increase the numbers of and improve the availability of coastal data and information needed by coastal resource managers and their staffs to accomplish their duties.

Maximum anticipated funding is \$200,000 for a one year grant period and is subject to the availability of FY 2003 appropriations. It is intended that this funding will be distributed between multiple projects that take the form of a grant.

Background

The mission of the Center is to support the environmental, social, and economic well being of the coast by linking people, information, and technology. The Information Resources program of the Center helps coastal resource managers and their staff find the data and information necessary to perform their tasks. To accomplish this, the Information Resources program improves access to and increases the availability of coastal data, products, and information. The Center actively supports the use of standards to document and share data, products, and information. In particular, the Center supports the use of the standards accepted by the FGDC and the Library of Congress. By using these standards, virtual networks of coastal data, products, and information can be built that provide crucial input for making coastal management decisions.

Project Proposals

The applicant must submit one original and two copies of the proposal(s) by 5 p.m. (Eastern time) on October 4, 2002 to the attention of Anne Ball, Room 211 at the NOAA Coastal Services Center, 2234 South Hobson

Avenue, Charleston, SC 29405–2413. In addition to the proposal(s), the applicant must submit a complete NOAA grants application package (with signed originals). No e-mail or fax copies will be accepted. All project proposals must total no more than 10 pages (double spaced, 12-point font, and exclusive of appendices). Appendices should be limited to materials that directly support the main body of the proposal; e.g. support letters, resumes, lists of data sources, and maps. All appendix material must be unbound. All project proposals must include the sections on the four following topics:

1. Technical Issues

- **Project Description.** Address how the project will be implemented. It should include an overview of the data, product, or information resource that will be made available on-line and any plans for data rescue or conversion of resources to electronic media. If applicable, it should include plans for the development of a customized interface to FGDC Clearinghouse nodes (servers) and/or library card catalog servers.

- **Data and Information Description.** Describe the data and/or information that will be made available via the server.

- **Server Description.** Describe how the resource description (FGDC metadata or USMARC library card catalog entry) and, if applicable, the resource itself will be made available on-line. Include plans for implementing an FGDC Clearinghouse node (server), catalog server, or arrangements for posting the resource description through an existing server.

- **Relation to Other Data Projects.** If applicable, describe how this project relates to other ongoing programs.

2. Relevance and Scope

- **Appropriateness to U.S. Coastal Resource Managers.** Describe how the data and/or information might be used by coastal resource managers and/or their staffs. Describe the scope of the project and who it benefits.

- **Description of Metadata or Catalog Records Anticipated.** Include the number of records anticipated and the level of detail included in the metadata or catalog records.

3. Future Plans

- **Post-proposal Plans.** Describe plans for maintenance of the data or information resource. For data rescue projects, please include plans for archiving the data.

4. Milestones and Budget

- **Milestones.** Provide a schedule for the project with milestones.

- **Project Budget.** Provide a detailed budget breakdown that follows the categories and formats in the NOAA grant package and a brief narrative that justifies each item.

All proposals regarding data and data products must include plans for documenting the data and/or data products using the Federal Geographic Data Committee (FGDC) metadata standard and posting this metadata on a node (server) that is registered at the FGDC Clearinghouse. Further information on the FGDC metadata standard and Clearinghouse architecture can be found on the FGDC Web site at www.fgdc.gov. Proposals may include the development of a customized interface to the FGDC Clearinghouse node (server) for improved access to the data or data product resource.

Proposals that include coastal products and information must include plans for making library card catalog entries searchable through a standard on-line public access catalog, preferably using the Z39.50 protocol. Any new cataloging of information materials (publications, CD-ROMS, videos, etc) must follow the USMARC standard. Consideration will be given to making pre-existing catalog entries that are not in USMARC available on-line. More information on USMARC and Z39.50 may be found on the Library of Congress Web site at www.loc.gov. Proposals may include the development of a customized interface to a Z39.50 catalog server to provide customized search capabilities to the information resource.

Proposals that cover data rescue or the conversion to electronic media of coastal data, products, or information must also include plans for documenting the data, products, and/or information using the appropriate standard mentioned above. In addition, proposals for rescuing data must include plans for archiving the data at an appropriate national data center.

Evaluation Criteria (With Weights) and Selection Process

Review panels, composed of two NOAA and at least two non-NOAA reviewers, will be established to assist in the evaluation of the proposals. Each member of the review panel will review independently each proposal using the evaluation criteria. The reviewers will not provide consensus advice. All proposals received will be ranked according to score and forwarded to the selecting official. The selecting official (Center Director) will use those scores

when he/she makes the final decision. The selecting official may also consider the following program policy factors in making the final selection decision: geographic and institutional balance. As a result, awards may not necessarily be made to the highest ranked applications. Final budget is negotiated after selection is made. Evaluation criteria are:

1. Technical Merit (40 points)

- The proposal will be judged on the technical merit on the plans for development of metadata or new catalog records, how the FGDC Clearinghouse or catalog server will be implemented, and, if applicable, plans for development of additional search interfaces, data rescue, and conversion to electronic media. Proposals which do not directly address how metadata/catalog records will be produced, or how the Clearinghouse/Catalog server will be implemented will be rejected and destroyed by CSC's Program Manager and not returned to the recipient.

2. Relevance and Scope (35 points)

- The proposal will be judged on the importance of the resource to coastal management issues. Priority will be given to those proposals that provide detailed (I level catalog or full FGDC metadata record) versus less detailed (K level catalog or "metalite" record).

3. Future plans (15 points)

- The proposal will be judged on the plans for future maintenance of the descriptive records (metadata or catalog records) and Clearinghouse or catalog server.

4. Milestones and Budget (10 points)

The proposal will be judged on the amount requested versus the technical merit and relevance.

Selection Schedule

Proposals will be reviewed once during the year. The following schedule lists the dates for the project selection and award process for grants: Proposal deadline with completed grant package—October 4, 2002. Earliest approximate grant start date—March 3, 2003. Note: All deadlines are for receipt by close of business (5 p.m. Eastern time) on the dates identified. Receipt of proposal and grant package with original signatures will be time stamped. Unsuccessful applications will be destroyed by the Program Manager and not returned to the applicant.

Funding Availability

Specific funding available for awards will be finalized after NOAA funds for

FY 2003 are appropriated. Total funding available for this grant with the Information Resources program is anticipated to be no more than \$200,000 and funding will be distributed over multiple projects. Publication of this document does not obligate NOAA to fund any specific grant or cooperative agreement or to award all or any part of the available funds.

Cost Sharing

There is no requirement for cost sharing in response to this program announcement and no additional weight will be given to proposals with cost sharing.

Eligibility Criteria

Eligible applicants are institutions of higher education, hospitals, other non-profits, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, international organizations, and state, local and Indian tribal governments. Federal agencies or institutions are not eligible to receive Federal assistance under this announcement, but may be project partners.

Note: Federal agencies or institutions who are project partners must demonstrate that they have legal authority to receive funds from outside sources in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

Authority

Statutory authority for these programs is 16 U.S.C. 1456C (Technical Assistance).

General Information for All Programs

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 01, 2001 (66 FR 49917), are applicable to this solicitation. However, please note that the Department of Commerce will not implement the requirements of Executive Order 13202 (66 FR 49921), pursuant to guidance issued by the Office of Management and Budget in light of a court opinion which found that the Executive Order was not legally authorized. See *Building and Construction Trades Department v. Allbaugh*, 172 F. Supp 2d 138 (D.D.C. 2001). This decision is currently on appeal. When the case has been finally resolved, the Department will provide further information on implementation of Executive Order 13202.

Applications under this program are subject to Executive Order 12372,

“Intergovernmental Review of Federal Programs.”

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

The recipients must comply with Executive Order 12906 regarding any and all geospatial data collected or produced under grants or cooperative agreements. This includes documenting all geospatial data in accordance with the Federal Geographic Data Committee Content Standard for digital geospatial data.

Classification

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

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act (APA) or any other law for this notice concerning grants, cooperative agreements, benefits, and contracts, 5 U.S.C. 553(a)(2). Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et. seq. and has not been prepared.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number. The use of the standard grants application package referred to in this notice involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF-LLL, and CD-346 have been approved by OMB under the respective Control Numbers 0348-0043, 0348-0044, 0348-0040, 0348-0046, and 0605-0001.

Dated: May 31, 2002.

Alan Neuschatz,

Associate Assistant Administrator for Management, Ocean Services and Coastal Zone Management.

[FR Doc. 02-14256 Filed 6-7-02; 8:45 am]

BILLING CODE 3510-JE-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Identification of Items That Are “Nautical Charts” Under 1974 International Convention for the Safety of Life at Sea

AGENCY: Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Statement of policy.

SUMMARY: The National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA) is legally responsible for providing nautical charts and related information. Requirements for the mandatory carriage and use of these nautical charts by certain vessels are established by the U.S. Coast Guard. In July, 2002, revisions to the Safety of Life at Sea (SOLAS) will enter into force. These revisions, among other things, define “nautical chart or nautical publication.” In order to provide clarification for regulatory and other purposes, NOS is providing this statement of products which meet the SOLAS definition.

DATES: Comments on this action should be submitted on or before 5 p.m. EST, July 10, 2002.

ADDRESSES: Comments in writing should be submitted to Director, Office of Coast Survey, National Ocean Service, NOAA (N/CS), 1315 East West Highway, Silver Spring, MD, 20910. Written comments may be faxed to (301) 713-4019. Comments by e-mail should be submitted to ECDIS@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Captain Nicholas Perugini, (301) 713-2724 x101, Nic.Perugini@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

NOS is responsible, under 33 U.S.C. 883a *et seq.*, to provide charts and related information for safe navigation in United States waters. Requirements for the mandatory carriage and use of these nautical charts by certain vessels are established by the U.S. Coast Guard and are published in Titles 33 and 46, Code of Federal Regulations. In revisions to SOLAS that will enter into force in July 2002, “nautical chart or nautical publication” are defined as “a special-purpose map or book, or a specially compiled database from which such a map or book is derived that is issued officially by or on the authority of a Government authorized Hydrographic Office or other relevant

government institution and is designed to meet the requirements of marine navigation." As these terms had not previously been defined, and as Coast Guard regulations require carriage of nautical charts, NOAA believed it appropriate to state the products that meet the SOLAS definition.

Policy Statement

The following items are nautical charts for purposes the 1974 International Convention for the Safety of Life at Sea, as amended. Each contains sufficient navigation and safety information to meet the definition of "nautical chart."

1. A paper nautical chart published by or on the authority of the National Ocean Service, NOAA; or

2. An electronic navigational chart or a raster navigational chart published by or on the authority of the National Ocean Service, NOAA.

Electronic navigational charts and raster navigational charts meet the standards for use in electronic chart display and information systems (ECDIS) in accordance with International Maritime Organization Assembly Resolution A.817(19), as amended. Electronic navigational charts and raster navigational charts are defined by the following specifications of the International Hydrographic Organization:

1. International Hydrographic Organization Special Publication No. 52—"Specifications for Chart Content and Display Aspects of ECDIS," including all Annexes and Appendices.

2. International Hydrographic Organization Special Publication No. 57—"IHO Transfer Standard for Digital Hydrographic Data," including all Annexes and Appendices, and

3. International Hydrographic Organization Special Publication No. 61—"Product Specification for Raster Navigational Charts (RNC)," including all Annexes and Appendices.

Nautical charts identified herein are recognizable by the authorized use of the NOAA logo, principally on NOAA-produced products; or by a NOAA-authorized certificate of authenticity on or within the product, principally on products produced on the authority of NOAA.

Dated: May 22, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator, Ocean Services and Coastal Zone Management.

[FR Doc. 02-14015 Filed 6-7-02; 8:45 am]

BILLING CODE 3510-JE-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0074]

Federal Acquisition Regulation; Submission for OMB Review; Contract Funding—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 has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning limitation of costs/funds. A request for public comments was published in the **Federal Register** at 67 FR 17675 on April 11, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology. **DATES:** Submit comments on or before July 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: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy 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: 53,456.

Responses Per Respondent: 1.

Annual Responses: 53,456.

Hours Per Response: .5.

Total Burden Hours: 26,728.

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, Contract Funding—Limitation of Costs/Funds, in all correspondence.

Dated: June 5, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02-14507 Filed 6-7-02; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 9, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process

would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 4, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Annual Performance Report for the Student Support Services Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 944.

Burden Hours: 5,664.

Abstract: Student Support Services grantees must submit the report annually. The reports are used to evaluate the performance of grantees and to award prior experience points at the end of each project (budget) period. The Department also aggregates the data to provide descriptive information on the programs and to analyze the impact of the program on the academic progress of participating students.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on

link number 2057. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202-4651 or to the e-mail address vivian_reese@ed.gov. Requests may also be electronically mailed to the Internet address OCIO_RIMG@ed.gov or faxed to 202-708-9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708-9266 or via his internet address Joe.Schubart@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 02-14441 Filed 6-7-02; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Secretary of Education requests comments on the Free Application for Federal Student Aid (FAFSA) that the Secretary proposes to use for the 2003-2004 year. The FAFSA is completed by students and their families and the information submitted on the form is used to determine the students' eligibility and financial need for financial aid under the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended, (Title IV, HEA Programs).

DATES: Interested persons are invited to submit comments on or before August 9, 2002.

SUPPLEMENTARY INFORMATION: Section 483 of the Higher Education Act of 1965, as amended (HEA), requires the Secretary, "in cooperation with agencies and organizations involved in providing student financial assistance," to "produce, distribute and process free of charge a common financial reporting form to be used to determine the need and eligibility of a student under" the Title IV, HEA Programs. This form is the FAFSA. In addition, Section 483 authorizes the Secretary to include non-financial data items that assist States in awarding State student financial assistance.

The Secretary requests comments on the draft 2003-2004 FAFSA that has been posted to the IFAP Web site (*see below*). In particular, in an effort to continually improve the application for students, parents, and schools, the Secretary seeks comments to further simplify the FAFSA form and reduce burden hours, including removing, replacing or combining data elements. For example, replace questions 11 and 12, or questions 96 and 97 with a new question asking for the student's email address.

The Secretary is considering additional skip logic to incorporate the simplified needs test and automatic zero expected family contribution to the FAFSA on the Web product, and requests comments regarding adding this functionality. The Secretary is publishing this request for comment under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Under that Act, ED must obtain the review and approval of the Office of Management and Budget (OMB) before it may use a form to collect information. However, under procedure for obtaining approval from OMB, ED must first obtain public comment of the proposed form, and to obtain that comment, ED must publish this notice in the **Federal Register**.

In addition to comments requested above, to accommodate the requirements of the Paperwork Reduction Act, the Secretary is interested in receiving comments with regard to the following matters: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 5, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Free Application for Federal Student Aid (FAFSA).

Frequency: Annually.

Affected Public: Individuals and families.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 13,726,803.

Burden Hours: 7,680,346.

Abstract: The FAFSA collects identifying and financial information about a student applying for Title IV, Higher Education Act (HEA) Program funds. This information is used to calculate the student's expected family contribution, which is used to determine a student's financial need. The information is also used to determine the student's eligibility for grants and loans under the Title IV, HEA Programs. It is further used for determining a student's eligibility for State and institutional financial aid programs.

ADDRESSES: Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202-4651. Please specify the complete title of the information collection when making your request. In addition, interested persons can access this document on the Internet:

- (1) Go to IFAP at <http://ifap.ed.gov>;
- (2) Click on "Current SFA Publications";
- (3) Scroll down and click on "FAFSAs and Renewal FAFSAs";
- (4) Click on "By 2003-2004 Award Year";
- (5) Click on "Draft FAFSA Form/Instructions".

Please note that the free Adobe Acrobat Reader software, version 4.0 or greater, is necessary to view this file. This software can be downloaded for free from Adobe's Web site: <http://www.adobe.com>.

Comments regarding burden and/or the information collection activity requirements should be directed to Joseph Schubart at (202) 708-9266 or via his Internet address Joe_Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

[FR Doc. 02-14527 Filed 6-7-02; 8:45 am]
BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB

review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 10, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address Karen_F_Lee@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: June 5, 2002.

John D. Tressler,

*Leader, Regulatory Information Management,
Office of the Chief Information Officer.*

Office of the Undersecretary

Type of Review: Revision.

Title: Reading Excellence Act: School and Classroom Implementation and Impact Study: Site Visit Instruments.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 7,535.

Burden Hours: 6,360.

Abstract: The Reading Excellence Act School and Classroom Implementation and Impact Study (REA-SCII) is a six-year study to learn about the implementation and impact of the REA legislation on instructional practice in reading and on student reading achievement. The study has the following features: (1) A representative sample of 75 schools that have received REA Local Reading Initiative sub-grants; (2) a longitudinal sample of kindergarten students followed through the end of second grade; measures of student reading performance; multiple observations of classroom reading instruction in grades K-2; and surveys of and interview/focus groups with key school and district staff.

Requests for copies of the submission for OMB review; comment request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2050. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202-4651 or to the e-mail address vivian.reese@ed.gov. Requests may also be electronically mailed to the Internet address OCIO_RIMG@ed.gov or faxed to 202-708-9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708-5359 or via her Internet address

Jackie.Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 02-14528 Filed 6-7-02; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02-147-001]

ANR Pipeline Company; Notice of Compliance Filing

June 3, 2002.

Take notice that on May 24, 2002, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Fourth Revised Sheet No.

150, proposed to be effective August 1, 2002.

ANR states that the above-referenced tariff sheet is being filed as a result of dispute resolution efforts regarding the tariff language in its proposed Limitation of Liability provision filed on January 18, 2002 in the above captioned docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 10, 2002. 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 proceedings. 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. 02-14425 Filed 6-7-02; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-206-008]

Atlanta Gas Light Company; Notice of Petition for Clarification and Limited Waivers

June 3, 2002.

Take notice that on May 23, 2002, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(5), ACN Energy, Energy America, Infinite Energy, New Power Company, SCANA Energy Marketing, Inc., and Southstar Energy Services dba Georgia Natural Gas (collectively, the Indicated Marketers) petition the Commission to grant clarifications, or if necessary limited waivers, to reassure the Georgia Public Service Commission (GPSC) about the inclusion of "ANR Services"—an upstream storage service (and relate transportation) critical to meeting temperature-sensitive retail load—under

the GPSC-jurisdictional Park and Redelivery Service Tariff (PRS Tariff) to Atlantic Gas Light Company (AGL).

Indicated Marketers states that the object of this pleading is to ensure that, under Georgia's recent retail gas restructuring, marketers who are now serving Georgia's retail load, in place of AGL, have the same level of access to the ANR Services so critical to serving retail load that AGL had prior to restructuring. Three years ago, AGL similarly requested clarification or waivers to, inter alia, include ANR Services under an Incremental Bundled Storage Service (IBSS) Tariff so that the ANR Services could be utilized by the marketers as AGL and previously utilized those services. The Commission granted AGL's request, but the IBSS Tariff has now expired. The GPSC seeks to replicate IBSS's functional purpose by having ANR Services included under the PRS Tariff in place of the IBSS Tariff. The requested clarification or waivers will permit the GPSC to do so.

In order to make ANR Services storage injections now, to serve temperature sensitive load this coming winter, the Indicated Marketers request Commission action on this petition by July 1, 2002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 10, 2002. 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 proceedings. 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. 02-14421 Filed 6-7-02; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02-1835-000]

California Independent System Operator Corporation; Notice of Filing

June 4, 2002.

Take notice that on May 17, 2002 with an amendment on May 20, 2002, the California Independent System Operator Corporation (ISO), tendered for filing an unexecuted Meter Service Agreement for ISO Metered Entities between the ISO and the City of Riverside, California (Riverside) for acceptance by the Commission.

The ISO states that this filing has been served on Riverside and the Public Utilities Commission of the State of California. The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective May 10, 2002.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at <http://www.ferc.gov> using the "RIMS" link, select "Docket #" and follow the instructions (call 202-208-2222 for assistance). 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.

Comment Date: June 10, 2002.

Linwood A. Watson, Jr.,
Deputy Secretary.

[FR Doc. 02-14470 Filed 6-7-02; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory
Commission**

[Docket No. CP01-70-005]

**Columbia Gas Transmission
Corporation; Notice of Compliance
Filing**

June 3, 2002.

Take notice that on May 20, 2002, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of December 1, 2001:

Substitute Third Revised Sheet No. 320
Substitute Second Revised Sheet No. 345

Columbia states that the filing is being made in compliance with the Commission's April 12, 2002 Order in the above referenced docket.

Columbia states that copies of its filing have been mailed to each of Columbia's firm and interruptible customers, affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. 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. 02-14415 Filed 6-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory
Commission**

[Docket No. CP02-375-000]

**Columbia Gas Transmission
Corporation; Notice of Application**

June 4, 2002.

Take notice that on May 24, 2002, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030-0146, filed in Docket No. CP02-375-000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) to reclassify injection/withdrawal Well No. 7368 to observation status and for permission and approval to abandon associated Well line 7368 consisting of 0.18 mile of 4-inch pipeline all located in Preston County, West Virginia in Columbia's Terra Alta Storage Field, all as more fully set forth in the application.

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).

Columbia states that given the insignificant contribution of the well to storage deliverability, further expenditure to maintain these facilities as active injection/withdrawal facilities is not justified. Columbia further states that the well itself can still perform a valuable function if converted to observation status. Columbia avers that such actions would not result in any change in the deliverability or annual turnover of the Terra Alta Storage Field.

Any questions regarding the application should be directed to Fredric J. George, Senior Attorney, Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 25315-1273 at (304) 357-2359, fax (304) 357-3206.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before June 25, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and

will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

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.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,*Secretary.*

[FR Doc. 02-14468 Filed 6-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory
Commission**

[Docket No. RP96-389-052]

**Columbia Gulf Transmission
Company; Notice of Negotiated Rate
Filing**

June 3, 2002.

Take notice that on May 24, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the

following contract for disclosure of a negotiated rate transaction under its Rate Schedule FTS-1:

Service Agreement No. 72824 between Columbia Gulf Transmission Company and Encana Energy Services, Inc. dated May 21, 2002

Transportation service is to commence November 1, 2002 and end March 31, 2003 under the agreement.

Columbia Gulf states it has served copies of the filing on all parties identified on the official service list in Docket No. RP96-389.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the 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. 02-14420 Filed 6-7-02; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02-95-000]

Constellation Power Source, Inc., Complainant, v. American Electric Power Service Corporation and Southwest Power Pool, Inc., Respondents; Notice of Complaint

June 4, 2002.

Take notice that on May 31, 2002, Constellation Power Source, Inc. (CPS), filed a Complaint Requesting Fast Track Processing against American Electric

Power Service Corporation (AEP) and Southwest Power Pool, Inc. (SPP).

Copies of the filing were served upon AEP and SPP. CPS is not aware of any other parties that may be expected to be affected by the complaint.

Any person desiring to be heard or to protest this 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 must be filed on or before June 12, 2002. 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. Answers to the complaint shall also be due on or before June 12, 2002. 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, interventions and answers 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02-14417 Filed 6-7-02; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00-340-007]

Gulf South Pipeline Company, LP; Notice of Compliance Filing

June 3, 2002.

Take notice that on May 23, 2002, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Attachment A to the filing, to be effective 30 days after an order on rehearing, and the tariff sheets listed on Attachment B to the filing, to be effective four months after an order on rehearing.

Gulf South states that it has reviewed the protests filed by United Municipal Distributors Group, Reliant Energy—

Entex, and Atmos Energy—Louisiana, each filed with the Commission on April 29, 2002. Gulf South states that it in general agrees with the protests and this filing is made to implement modifications as provided in the protests to Gulf South's April 15, 2002 compliance filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. 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. 02-14423 Filed 6-7-02; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10418-000]

City of Harrisburg, Pennsylvania; Notice of Effective Date of License Application

June 4, 2002.

The City of Harrisburg, Pennsylvania, filed a license application for the proposed Dock Street Dam and Lake Project, to be located on the Susquehanna River in Harrisburg. On May 16, 2002, the City filed a letter asking the Commission to accept its voluntary surrender of the license application for the proposed project.

No motion in opposition to the notice of the withdrawal was filed, and the Commission took no action to disallow the withdrawal. Accordingly, pursuant to Rule 216 of the Commission's Rules of Practice and Procedure,¹ the

¹ 18 CFR 385.216(b) (2001).

withdrawal became effective on June 4, 2002.

Magalie R. Salas,
Secretary.

[FR Doc. 02-14471 Filed 6-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02-15-001]

Horizon Pipeline Company, L.L.C.; Notice of Compliance Filing

June 3, 2002.

Take notice that on May 28, 2002, Horizon Pipeline Company, L.L.C. (Horizon) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, Substitute Original Sheet No. 7A to be effective April 15, 2002.

Horizon states that the purpose of this filing is to comply with the Commission's Order issued on May 10, 2002, in Docket No. GT02-15-000.

Horizon states that copies of the filing are being mailed to its customers, interested state agencies and all parties set out on the Commission's official service list in Docket No. GT02-15-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. 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. 02-14419 Filed 6-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-176-058]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

June 3, 2002.

Take notice that on May 29, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Second Revised Sheet No. 26P.02 to be effective June 1, 2002.

Natural states that the purpose of this filing is to implement an amendment to an existing rate transaction entered into by Natural and Dynegy Marketing and Trade under Natural's Rate Schedule FTS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff. Natural states that the negotiated rate agreement does not deviate in any material respect from the applicable form of service agreement in Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99-176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the 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. 02-14422 Filed 6-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02-161-000]

Ohio Valley Hub, LLC; Notice of Application for Blanket Certificate of Public Convenience and Necessity

June 4, 2002.

Take notice that on April 17, 2002, Ohio Valley Hub, LLC (OVH), 19 N.W. Fourth Street, Suite 600, Evansville, Indiana 47708, filed, pursuant to Section 7(c) of the Natural Gas Act (NGA) 15 U.S.C. 717f(c), and Section 284.224 of the Commission's regulations, 18 CFR 284.224, an Application for Blanket Certificate of Public Convenience and Necessity to provide firm and interruptible transportation services in the same manner as though it were an interstate pipeline providing such services under Subparts C and D of Part 284 of the Commission's regulations, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

OVH is engaged in the business of transporting natural gas to two customers within the State of Indiana. OVH is a public utility within the meaning of Indiana Code § 8-1-2-1 and its rates and tariffs are subject to regulation by the Indiana Utility Regulatory Commission. OVH is exempt from the Commission's regulation by reason of Section 1(c) of the NGA.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 11, 2002. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the 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. 02-14466 Filed 6-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01-69-004]

Petal Gas Storage, L.L.C.; Notice of Amendment

June 3, 2002.

Take notice that on April 23, 2002, Petal Gas Storage, L.L.C. (Petal), Nine Greenway Plaza, Houston, Texas 77046, filed in Docket No. CP01-69-004, an application for authorization to amend its certificate of public convenience and necessity issued to Petal in the Commission's October 25, 2001 and February 14, 2002 Orders¹, all as more fully set forth in the application which is on file with the Commission and open to public inspection. 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)

Petal requests that the Commission vacate that portion of the certificate authorizing Petal to construct 0.3 miles of new bi-directional 36-inch pipeline (the Transco Lateral) from a tie-in point on the Transcontinental Gas Pipe Line Corporation (Transco) system. Petal states that it submits this request in order to accommodate Transco's desire to build the Transco Lateral itself on Transco's Part 157 blanket certificate. Petal states that in attempting to reach an agreement with Transco and to strive to meet the proposed in-service date for its customers, the best way to proceed expeditiously would be to accommodate Transco's firmly expressed desire to own and operate the Transco Lateral. According to Petal, aside from some potential delay in the completion of all facilities originally contemplated under the certificate, the requested amendment will have no adverse effect on Petal's proposed service or on its customers. While it is Petal's understanding that Transco intends to construct the Transco Lateral using 30-inch diameter pipe rather than 36-inch

diameter pipe, this will not change Petal's ability to meet its firm service obligations on Petal's pipeline. Further, Petal states that to the extent that Transco's construction of the Transco lateral affects Petal's projected costs for the Project, Petal will reflect those changes in its "statement of cost" filing as required under 18 CFR 157.20(c).

Any questions concerning this application may be directed to Jay V. Allen, Counsel, El Paso Corporation, Nine Greenway Plaza, Houston, Texas 77046, at (832) 676-5589 or fax (832) 676-2251.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before June 13, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

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.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice

describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,
Secretary.

[FR Doc. 02-14414 Filed 6-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00-491-002, RP02-188-001, and CP01-69-005]

Petal Gas Storage, L.L.C.; Notice of Compliance Filing

June 3, 2002.

Take notice that on May 28, 2002, Petal Gas Storage, L.L.C. (Petal), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Original Sheet No. 11A. Petal requests that this sheet be made effective May 1, 2002.

Petal states that the tariff sheet is being filed in compliance with the Commission's May 1, 2002 Letter Order in the above-referenced proceeding, which relates to Petal's compliance with Order No. 637.

Petal states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 10, 2002. 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 proceedings. 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. 02-14424 Filed 6-7-02; 8:45 am]

BILLING CODE 6717-01-P

¹ See 97 FERC ¶ 61,097 (2001) and 98 FERC ¶ 61,152 (2002).

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. EG02-114-000]

PH Generating Statutory Trust B; Notice of Amendment to Application for Commission Determination of Exempt Wholesale Status

June 4, 2002.

Take notice that on May 30, 2002, PH Generating Statutory Trust B (Applicant) filed with the Federal Energy Regulatory Commission (Commission) an amendment to its application for determination of exempt wholesale generator status filed in this proceeding on April 8, 2002.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission's web site at <http://www.ferc.gov> using the "RIMS" link, select "Docket #" and follow the instructions (call 202-208-2222 for assistance). 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.

Comment Date: June 17, 2002.

Magalie R. Salas,*Secretary.*

[FR Doc. 02-14469 Filed 6-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP00-482-001]

Reliant Energy Gas Transmission Company; Notice of Compliance Filing

June 4, 2002.

Take notice that on May 30, 2002, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective June 1, 2002.

REGT states that the purpose of this filing is to incorporate revised tariff language required by the Commission's order issued April 30, 2002 in Docket No. RP02-196-000 by filing substitute tariff sheets to REGT's Order No. 637 compliance filing made on April 29, 2002 to be effective June 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 11, 2002. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the 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. 02-14474 Filed 6-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP02-196-001]

Reliant Energy Gas Transmission Company; Notice of Compliance Filing

June 4, 2002.

Take notice that on May 30, 2002, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to be effective May 1, 2002.

REGT states that the purpose of this filing is to comply with the Commission's order issued April 30, 2002 in Docket No. RP02-196-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 11, 2002. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the 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. 02-14475 Filed 6-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP02-209-001]

Southern Natural Gas Company; Notice of Compliance Filing

June 3, 2002.

Take notice that on May 29, 2002, Southern Natural Gas Company

(Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheet to become effective May 1, 2002:

Substitute First Revised Sheet No. 101B

Southern states that the purpose of this filing is to comply with the Commission's order dated April 30, 2002 in the above-referenced docket. Such letter order generally approved Southern's tariff filing made to allow Southern to enter into prearranged transaction with shipper prior to holding an open season for available capacity to a net present value (NPV) of awarding available capacity. Such order required Southern to make a compliance filing (i) to clarify that it could not enter into a prearranged transaction for capacity during an open season for that capacity; and (ii) to post the initial asking rate, the agreed upon rate under the prearranged transaction and the price at which the capacity has been awarded to a prearranged shipper.

Southern has requested that these sheets be made effective as of May 1, 2002 consistent with the Commission's April 30 Order.

Southern states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. 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. 02-14426 Filed 6-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00-468-005 and RP01-25-005]

Texas Eastern Transmission, LP; Notice of Compliance Filing

June 4, 2002.

Take notice that on May 29, 2002, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the tariff sheets listed in Appendices to the filing.

Texas Eastern states that the purpose of this filing is to comply with the Commission's February 27, 2002 order on Texas Eastern's Order No. 637 compliance filing.

Texas Eastern states that copies of the filing have been mailed to all parties on the official service lists compiled by the Secretary of the Commission in these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 11, 2002. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the 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. 02-14473 Filed 6-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02-317-000]

Unocal Keystone Gas Storage, LLC; Notice of Application for a Limited Blanket Certificate Related to Gas Storage and Transportation at Market- Based Rates

June 4, 2002.

Take notice that on May 21, 2002, Unocal Keystone Gas Storage, LLC, (Keystone) a limited liability company with its principal place of business at 14141 Southwest Freeway, Sugar Land, Texas 77478, filed in Docket No. CP02-317-000 an application pursuant to Section 7c of the Natural Gas Act, as amended, and Section 284.224 of the Commission's Rules and Regulations thereunder, for a limited jurisdiction blanket certificate authorizing it to engage in gas storage and transportation activities at market-based rates. Keystone states it is a Hinshaw company that is exempt from the Commission's general jurisdiction under section 1(c) of the Natural Gas Act.

Keystone explains that it is developing natural gas storage caverns in underground salt formations in Winkler County, Texas, pursuant to orders issued by the Railroad Commission of Texas. The first phase of the project will consist of three operationally integrated storage caverns with working gas capacity of 1 Bcf each. Keystone requests a blanket certificate pursuant to Section 284.224 of the Commission's regulations authorizing it to provide interstate storage services using the portion of its facilities that is not required by the Texas intrastate market.

Keystone also requests authority to charge market-based rates for its services. Keystone states that this request is consistent with the Commission's "Alternative to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines Statement of Policy" and orders authorizing market-based rates for numerous other small storage providers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 11, 2002. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the 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.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act, as amended, and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that an oral hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at hearing.

Magalie R. Salas,

Secretary.

[FR Doc. 02-14467 Filed 6-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02-1447-001]

Virginia Electric and Power Company; Notice of Filing

April 24, 2002.

Editorial Note: Due to printing errors this document was omitted from the issue of Wednesday, May 1, 2002. It was referenced in the table of contents as appearing on page 21650. It is being correctly printed in its entirety.

Take notice that on April 11, 2002, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing a cover page to revise the proposed designation of an

executed Interconnection Agreement between Dominion Virginia Power and Industrial Power Generating Corporation (Ingenco).

Dominion Virginia Power respectfully requests that the Commission allow the revised cover sheet to become effective on May 24, 2000, the date on which Dominion Virginia Power originally requested the Interconnection Agreement become effective.

Copies of the filing were served upon Ingenco and the Virginia State Corporation Commission.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. The filing is available for review at the Commission or may be viewed on the Commission's web site at <http://www.ferc.gov> using the "RIMS" link, select "Docket #" and follow the instructions (call 202-208-2222 for assistance). 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.

Comment Date: May 2, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02-10658 Filed 6-7-02; 8:45 am]

BILLING CODE 6717-01-P

Editorial Note: Due to printing errors this document was omitted from the issue of Wednesday, May 1, 2002. It was referenced in the table of contents as appearing on page 21650. It is being correctly printed in its entirety.

[FR Doc. R2-10658 Filed 6-7-02; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL01-74-001 and ER01-2058-001]

Western Electricity Coordinating Council; Notice of Filing

May 24, 2002.

Take notice that on May 20, 2002, Western Electricity Coordinating Council (WECC) tendered for filing with the Federal Energy Regulatory Commission (Commission) the WECC Bylaws, Notice of Succession and Notice of Cancellation. WECC was established as a result of the merger of Western Systems Coordinating Council, Western Regional Transmission Association, and Southwest Regional Transmission Association.

This filing is made in accordance with the Commission's September 27, 2001 Order Granting Request to Transfer Programs and Directing Additional Filings, 96 FERC ¶ 61,348 (2001). It includes the WECC Bylaws, which have been modified consistent with the Commission's order. It also includes a Notice of Succession for the Unscheduled Flow Mitigation Plan and Reliability Management System contracts, which were previously administered by the WSCC and will now be administered by WECC. Finally, it includes a Notice of Cancellation of the Governing Agreements of WRTA and SWRTA.

Copies of the filing were served upon all parties in the above-captioned proceedings.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "RIMS" link, select "Docket #" and follow the instructions (call 202-208-2222 for assistance). 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. *Comment Date:* June 10, 2002.

Magalie R. Salas,
Secretary.

[FR Doc. 02-14416 Filed 6-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00-461-002]

Western Gas Interstate Company; Notice of Compliance Filing

June 4, 2002.

Take notice that on May 28, 2002, Western Gas Interstate Company (WGI), tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of July 1, 2002.

Title Page Second Revised Sheet No. 229
irst Revised Sheet No. 111
First Revised Sheet No. 134
First Revised Sheet No. 136A
Second Revised Sheet No. 137
First Revised Sheet No. 137A
Second Revised Sheet No. 140
Second Revised Sheet No. 142
Second Revised Sheet No. 143
Second Revised Sheet No. 145
First Revised Sheet No. 223
First Revised Sheet No. 224
First Revised Sheet No. 225
Second Revised Sheet No. 226
Second Revised Sheet No. 227
Second Revised Sheet No. 229
First Revised Sheet No. 230A
First Revised Sheet No. 230B
First Revised Sheet No. 230C
Second Revised Sheet No. 231
Second Revised Sheet No. 236
Third Revised Sheet No. 239
Second Revised Sheet No. 242
Second Revised Sheet No. 245
First Revised Sheet No. 246
Fourth Revised Sheet No. 247
Third Revised Sheet No. 248
First Revised Sheet No. 256
First Revised Sheet No. 275

WGI states that the filing is being made in compliance with the Commission's March 14, 2002 order in this proceeding, to implement changes in WGI's tariff to comply with Order Nos. 637 and 637-A, as well as Order Nos. 587-G, 587-H, 587-I, 587-L, 587-M, and 587-O.

WGI states that copies of this filing were served on its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 10, 2002. 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 proceedings. 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. 02-14472 Filed 6-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT95-11-003]

Williams Gas Pipelines Central, Inc.; Notice of Filing of Refund Report

June 3, 2002.

Take notice that on May 24, 2002, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing its report of activities regarding collection of Kansas ad valorem taxes.

Williams states that this filing is being made in compliance with Commission order issued September 10, 1997 in Docket Nos. RP97-369-000, *et al.* The September 10 order requires first sellers to make refunds for the period October 3, 1983 through June 28, 1988. The Commission directed that pipelines file a report annually concerning their activities to collect and flow through refunds of the taxes at issue.

Williams states that a copy of its filing was served on all parties included on the official service list maintained by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 10, 2002. 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 proceedings. 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. 02-14418 Filed 6-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99-2322.001, *et al.*]

MEP Investments, LLC, *et al.*; Electric Rate and Corporate Regulation Filings

May 30, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. MEP Investments, LLC, MEP Pleasant Hill, LLC, MEP Pleasant Hill Operating, LLC, Pleasant Hill Marketing, LLC, Aquila Merchant Services, Inc.

[Docket Nos. ER99-2322-001, ER99-2858-002, ER01-905-001, ER00-1851-001, ER02-1381-001]

Take notice that on May 24, 2002, MEP Investments, LLC (MEP Investments), MEP Pleasant Hill, LLC (MEP Pleasant Hill), MEP Pleasant Hill Operating, LLC (MEP Operating), Pleasant Hill Marketing, LLC (Pleasant Hill Marketing) and Aquila Merchant Services, Inc. (AMS and collectively, Applicants) jointly tendered for filing with the Federal Energy Regulatory Commission an updated market power analysis. This filing serves as the triennial updated market power analysis in Docket No. ER99-2322-000 for MEP Investments, Docket No. ER99-2858-000 for MEP Pleasant Hill, Docket No. ER01-905-000 for MEP Operating, Docket No. ER00-1851-000 for Pleasant Hill Marketing and Docket No. ER94-216-000 for AMS. In addition, Applicants request the Commission to synchronize their future triennial market power updates.

Comment Date: June 14, 2002.

2. Entergy Services, Inc.

[Docket No. ER02-1069-002]

Take notice that on May 23, 2002, Entergy Services, Inc., on behalf of Entergy Louisiana, Inc., tendered for filing with the Federal Energy Regulatory Commission (Commission), a compliance Amended and Restated Interconnection and Operating Agreement with Washington Parish Energy Center, L.L.C., in response to the Commission's April 23, 2002, order in Entergy Services, Inc., 99 FERC ¶ 61,077 (2002).

Comment Date: June 13, 2002.

3. Southern California Edison Company

[Docket No. ER02-1073-001]

Take notice, that on May 23, 2002, Southern California Edison Company (SCE) submitted for filing a substitute rate sheets for FERC Electric Tariff, Substitute First Revised Original Volume No. 6, Service Agreement No. 11, the Interconnection Facilities Agreement (Interconnection Agreement) between SCE and High Desert Power Trust (HDPT) in compliance with the Commission's letter order rendered in this docket on April 23, 2002.

SCE requests that the revised rate sheets become effective on February 23, 2002. Copies of this filing were served upon the Public Utilities Commission of the State of California, HDPT and High Desert Power Project, LLC.

Comment Date: June 13, 2002.

4. American Electric Power Service Corporation

[Docket No. ER02-1215-002]

Take notice that on May 24, 2002 American Electric Power Service Corporation tendered for filing, on behalf of its affiliated companies including Central Power and Light Company and West Texas Utilities Company, (collectively, AEP), an Interim Qualified Scheduling Entity Service Agreement (Agreement) formatted and designated to comply with Order No. 614.

Copies of the filing have been served on the party to the Agreement as well as on the Public Utility Commission of Texas.

Comment Date: June 14, 2002.

5. PPL Electric Utilities Corporation

[Docket No. ER02-1460-001]

Take notice that on May 23, 2002, PPL Electric Utilities Corporation (PPL Electric) filed a supplement to its April 1, 2002 filing in this docket. The supplement consists of a copy of PPL Electric's Rate Schedule FERC No. 116 designated in accordance with Order No. 614.

PPL Electric states that a copy of this filing has been provided to Metropolitan Edison Company and to the Pennsylvania Public Utility Commission.

Comment Date: June 13, 2002.

6. PPL Electric Utilities Corporation

[Docket No. ER02-1461-001]

Take notice that on May 23, 2002, PPL Electric Utilities Corporation (PPL Electric) filed a supplement to its April 1, 2002 filing in this docket. The supplement consists of a copy of PPL Electric's Rate Schedule FERC No. 116 designated in accordance with Order No. 614.

PPL Electric states that a copy of this filing has been provided to Metropolitan Edison Company and to the Pennsylvania Public Utility Commission.

Comment Date: June 13, 2002.

7. PPL Electric Utilities Corporation

[Docket No. ER02-1462-001]

Take notice that on May 23, 2002, PPL Electric Utilities Corporation (PPL Electric) filed a supplement to its April 1, 2002 filing in this docket. The supplement consists of a copy of PPL Electric's Rate Schedule FERC No. 117 designated in accordance with Order No. 614.

PPL Electric states that a copy of this filing has been provided to Pennsylvania Electric Company and to the Pennsylvania Public Utility Commission.

Comment Date: June 13, 2002.

8. PPL Electric Utilities Corporation

[Docket No. ER02-1867-000]

Take notice that on May 22, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) tendered for filing an Interconnection Agreement between PPL Electric Utilities and RR Donnelley & Sons Company.

Comment Date: June 12, 2002.

9. PPL Electric Utilities Corporation

[Docket No. ER02-1868-000]

Take notice that on May 22, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) tendered for filing an Interconnection Agreement between PPL Electric Utilities and Conectiv Bethlehem, Inc.

Comment Date: June 12, 2002.

10. Consumers Energy Company

[Docket No. ER02-1869-000]

Take notice that on May 22, 2002 Consumers Energy Company (Consumers) tendered for filing a Service Agreement with American Electric Power Service Corporation,

(Customer) under Consumers' FERC Electric Tariff No. 9 for Market Based Sales.

Consumers requested that the Agreement be allowed to become effective as of May 1, 2002. Copies of the filing were served upon the Customer and the Michigan Public Service Commission.

Comment Date: June 12, 2002.

11. PJM Interconnection, L.L.C.

[Docket No. ES02-41-000]

Take notice that on May 22, 2002, PJM Interconnection, L.L.C., submitted an application pursuant to section 204 of the Federal Power Act seeking authorization issue a secured promissory note in the amount of \$75 million for a term credit facility and an unsecured promissory note in an amount of up to \$15 million for revolving line of credit.

Comment Date: June 20, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "RIMS" link, select "Docket #" and follow the instructions (call 202-208-2222 for assistance). 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. 02-14412 Filed 6-7-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. EG02-136.000, et al.]

Waterside Power, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

May 31, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Waterside Power, L.L.C.

[Docket No. EG02-136-000]

Take notice that on May 28, 2002, Waterside Power, L.L.C. filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935. The applicant is a limited liability company organized under the laws of the State of Delaware that is engaged directly and exclusively in developing, owning, and operating a 69.25 MW (net) gas turbine electric generating facility, which will be an eligible facility.

Comment Date: June 21, 2002.**2. Deseret Generation & Transmission Co-operative, Inc.**

[Docket No. ER99-2506-001]

Take notice that on May 28, 2002, Deseret Generation & Transmission Co-operative, Inc. (Deseret) tendered for filing a triennial updated market analysis as required by the Federal Energy Regulatory Commission in approval of Deseret's market-based rate schedule. Copies of this filing were served upon Deseret's member cooperatives.

Comment Date: June 18, 2002.**3. Minnesota Power**

[Docket No. ER01-2636-001]

Take notice that on May 28, 2002, Minnesota Power tendered for filing its triennial market power update.

Comment Date: June 18, 2002.**4. Entergy Arkansas, Inc.**

[Docket No. ER02-1151-002]

Take notice that on May 28, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., tendered for filing with the Federal Energy Regulatory Commission (Commission), a compliance Interconnection and Operating Agreement with Plum Point Energy Associates, LLC, in response to the Commission's April 25, 2002, order in Entergy Arkansas, Inc., 99 FERC ¶ 61,097 (2002).

Comment Date: June 18, 2002.**5. PPL University Park, LLC**

[Docket No. ER02-1327-001]

Take notice that on May 28, 2002, PPL University Park, LLC filed a compliance filing pursuant to the Federal Energy Regulatory Commission's Letter Order issued May 9, 2002 in this docket.

PPL University Park states that a copy of this filing has been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Comment Date: June 18, 2002.**6. Wisconsin Electric Power Company**

[Docket No. ER02-1886-000]

Take notice that on May 22, 2002, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing changes to Exhibit B of the Second Revised Power Sales Agreement, Second Revised Rate Schedule FERC No. 90, between Wisconsin Electric and Wisconsin Public Power, Inc.

Wisconsin Electric respectfully requests an effective date of February 1, 2002.

Comment Date: June 12, 2002.**7. Wisconsin Electric Power Company**

[Docket No. ER02-1887-000]

Take notice that on May 22, 2002, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing changes to the Wholesale Distribution Delivery Service Agreement, Rate Schedule FERC No. 97, between Wisconsin Electric and Wisconsin Public Power, Inc.

Wisconsin Electric respectfully requests an effective date of February 1, 2002.

Comment Date: June 12, 2002.**8. Entergy Services, Inc.**

[Docket No. ER02-1888-000] Take notice that on May 22, 2002, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc. (Entergy Gulf States), tendered for filing six copies of a Notice of Termination of the Interconnection and Operating Agreement and Generator Imbalance Agreement between Entergy Gulf States and Hartburg Power, LP.

Comment Date: June 12, 2002.**9. Midwest Independent Transmission System Operator, Inc.**

[Docket No. ER02-1889-000]

Take notice that on May 23, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), the Administrator of the Mid-Continent Area Power Pool (MAPP) Tariff filed with the Federal Energy Regulatory Commission (Commission) pursuant to section 205 of the Federal Power Act and Section 35.13 of the Commission's

regulations, 18 CFR 35.13 (2001), a Long-Term Firm Service Agreement for transmission service for Utilities Plus under MAPP Schedule F.

A copy of this filing was sent to Utilities Plus.

Comment Date: June 13, 2002.**10. Edison Source**

[Docket No. ER02-1891-000]

Take notice that on May 23, 2002, Edison Source filed to cancel its Market-Based Rate Tariff.

Comment Date: June 13, 2002.**11. Midwest Independent Transmission System Operator, Inc.**

[Docket No. ER02-1892-000]

Take notice that on May 23, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), the Administrator of the Mid-Continent Area Power Pool (MAPP) Tariff filed with the Federal Energy Regulatory Commission (Commission) pursuant to section 205 of the Federal Power Act and Section 35.13 of the Commission's regulations, 18 CFR 35.13 (2001), a Long-Term Firm Service Agreement No. 276 for transmission service for OTP Wholesale Marketing under MAP Schedule F.

A copy of this filing was sent to OTP Wholesale Marketing.

Comment Date: June 13, 2002.**12. Midwest Independent Transmission System Operator, Inc.**

[Docket No. ER02-1893-000]

Take notice that on May 23, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), the Administrator of the Mid-Continent Area Power Pool (MAPP) Tariff filed with the Federal Energy Regulatory Commission (Commission) pursuant to section 205 of the Federal Power Act and Section 35.13 of the Commission's regulations, 18 CFR 35.13 (2001), a Long-Term Firm Service Agreement No. 277 for transmission service for OTP Wholesale Marketing under MAP Schedule F.

A copy of this filing was sent to OTP Wholesale Marketing.

Comment Date: June 13, 2002.**Standard Paragraph**

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "RIMS" link, select "Docket #" and follow the instructions (call 202-208-2222 for assistance). 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. 02-14413 Filed 6-7-02; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RT02-2000; ER01-2997-000; RT01-37-000; ER01-123-000; ER01-2999-000; RT01-84-000; ER02-108-000; RT01-87-000; EL01-116-000; RT01-26-000; RT01-98-000; RM99-2-000; RT01-99-000 and RT01-100-000; RT01-1-000; and ER01-2993-000]

State-Federal Regional Transmission Organization Panels, Dayton Power and Light Company; Illinois Power Company; Midwest Independent System Operator, Inc.; Midwest ISO; Montana-Dakota Utilities Company; Northern Indiana Public Service Company; PJM Interconnection, L.L.C.; Regional Transmission Organizations; Regional Transmission Organizations Informational Filings; Virginia Electric and Power Company; Notice of State-Federal Regional Workshop For the Midwest

June 3, 2002.

On June 24, 2002, from 2:45 p.m. to 4:00 p.m. Central Daylight Time (3:45 p.m. to 5:00 p.m. Eastern Daylight Time), there will be a state-federal workshop on regional transmission organizations for the Midwest. It will be held at the Radisson Inn Bismarck, 800 3rd Street South, Bismarck, North Dakota 58504. The workshop is free and open to the public. It will provide a forum for a dialogue between the state commissions, similar Canadian provincial and national agencies, and the Federal Energy Regulatory

Commission. Similar Canadian agencies have regulatory authority comparable to American state regulatory agencies and have a stake in the outcome of the Federal Energy Regulatory Commission's proceedings on regional transmission organizations. Commissioners and staff from the state commissions, the Federal Energy Regulatory Commission, and the Canadian agencies may participate in person or via telephone. The public may attend this discussion on site.

The proposed agenda concerns:

1. Scope and configuration of the Midwest ISO; state commission concerns about the proposed regional transmission organization choices for Alliance companies; identifying the next steps to be taken.
2. Issues pertaining to the creation of a "unified" market between the Southwest Power Pool, Midwest ISO, and PJM Interconnection.
3. The role of state commissions in the planning and governance of regional transmission organizations.
4. State commissioners' views on elements of standard markets: (a) allocation of transmission rights, (b) terms and conditions of power flows, and (c) pricing methodologies for transmission.
5. Policy of the Federal Energy Regulatory Commission on cost recovery for transmission upgrades and expansions.

The panel discussion will be transcribed, and the transcript will be placed in related dockets. Ace-Federal Reporters will provide copies of the transcript at cost. The phone numbers of Ace-Federal Reporters are (800) 336-6646 and (202) 347-3700. Additionally, the Commission will post the transcript on its Web site ten days after receipt from Ace-Federal Reporters.

For additional information, please contact: Sarah McKinley, State Relations, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. (202) 208-2016. Sarah.McKinley@ferc.gov.

Magalie R. Salas,
Secretary.

[FR Doc. 02-14427 Filed 6-7-02; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

June 5, 2002.

The following notice of meeting is published pursuant to section 3(A) of

the Government in the Sunshine Act (Pub. L. 94-409), 5 U.S.C. 552B.

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: June 12, 2002, 10:00 a.m.

PLACE: Room 2C, 888 First Street, NE Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note:—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 208-0400, for a recording listing items stricken from or added to the meeting, call (202) 208-1627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

795TH—Meeting, June 12, 2002, Regular Meeting 10:00 a.m.

Administrative Agenda

A-1.

DOCKET# AD02-1,000, Agency Administrative Matters

A-2.

DOCKET# AD02-7,000, Customer Matters, Reliability, Security and Market Operations

Markets, Tariffs and Rates—Electric

E-1.

DOCKET# ER02-1575,000, American Electric Power Service Company

E-2.

DOCKET# ER02-1599,000, DTE East China, LLC

E-3.

DOCKET# ER02-1651,000, California Independent System Operator Corporation

E-4.

DOCKET# ER02-1646,000, New England Power Pool

E-5.

DOCKET# ER01-2754,000, Nevada Power Company
OTHER#S ER01-2754,001, Nevada Power Company

ER01-2754,002, Nevada Power Company
ER01-2755,000, Nevada Power Company
ER01-2755,001, Nevada Power Company
ER01-2755,002, Nevada Power Company
ER01-2758,000, Sierra Pacific Power Company and Nevada Power Company
ER01-2758,001, Sierra Pacific Power Company and Nevada Power Company
ER01-2758,002, Sierra Pacific Power Company and Nevada Power Company
ER01-2759,000, Sierra Pacific Power Company and Nevada Power Company
ER01-2759,001, Sierra Pacific Power Company and Nevada Power Company
ER01-2759,002, Sierra Pacific Power Company and Nevada Power Company

E-6.

- DOCKET# ER02-92,000, Virginia Electric and Power Company
OTHER#S ER02-92,001, Virginia Electric and Power Company
- E-7. DOCKET# ER02-1637,000, California Independent System Operator Corporation
- E-8. OMITTED
- E-9. DOCKET# ER99-2854,002, Entergy Services, Inc.
OTHER#S ER95-112, 011, Entergy Services, Inc.
ER96-586,006, Entergy Services, Inc.
EL99-87,002, Entergy Services, Inc.
- E-10. DOCKET# ER01-3142,008, Midwest Independent Transmission System Operator, Inc.
- E-11. DOCKET# EL01-56,002, Niagara Mohawk Holdings, Inc. and National Grid USA
OTHER#S EC01-63,002, Niagara Mohawk Holdings, Inc. and National Grid USA
- E-12. DOCKET# QF90-176,003, Vineland Cogeneration Limited Partnership
OTHER#S QF90-176,004, Vineland Cogeneration Limited Partnership
- E-13. DOCKET# EC02-49,000, The Cleveland Electric Illuminating Company, The Toledo Edison Company, FirstEnergy Ventures Corporation and Bay Shore Power Company
OTHER# EL02-96,000, NRG Northern Ohio Generating LLC, NRG Ashtabula Generating LLC and NRG Lakeshore Generating LLC
- E-14. OMITTED
- E-15. DOCKET# ER02-700,001, Florida Power & Light Company
OTHER#S ER02-700,002, Florida Power & Light Company
- E-16. OMITTED
- E-17. DOCKET# ER02-766,001, Florida Power & Light Company
OTHER#S ER02-766,002, Florida Power & Light Company
- E-18. DOCKET# ER02-925,002, Southern California Edison Company
- E-19. DOCKET# ER97-2355,005, Southern California Edison Company
OTHER#S ER98-1261,002, Southern California Edison Company
ER98-1685,001, Southern California Edison Company
- E-20. DOCKET# EL02-68,000, Southern Minnesota Municipal Power Agency
- E-21. DOCKET# EL01-76,000, The State of Michigan and The Michigan Public Service Commission v. Wolverine Supply Cooperative, Inc.
- E-22. DOCKET# EG02-119,000, Celerity Energy of Colorado, LLC
- E-23. DOCKET# ER02-994,000, Duke Energy Corporation
OTHER#S ER02-994,001, Duke Energy Corporation
ER02-994,002, Duke Energy Corporation
- E-24. DOCKET# ER02-1672,000, Western Area Power Administration
- E-25. DOCKET# EL02-3,000, PPL Electric Utilities Corporation
- E-26. DOCKET# EL02-37,000, NSTAR Electric & Gas Corporation v. ISO New England, Inc. And Parties to Market Rule 17 Section 17.3.2.2(b) Agreements
- E-27. DOCKET# EL00-83,003, NSTAR Services Company Company v. New England Power Pool
OTHER#S ER00-2811,003, ISO New England, Inc.
- E-28. DOCKET# EL00-62,043, ISO New England, Inc.
OTHER#S ER98-3853,012, New England Power Pool
ER98-3853,013, New England Power Pool
EL00-62,044, ISO New England, Inc.
- E-29. DOCKET# ER02-922,001, California Independent System Operator Corporation
- E-30. DOCKET# ER02-1266,001, Niagara Mohawk Power Corporation
- E-31. DOCKET# ER01-812,000, Geysers Power Company, LLC
OTHER#S ER01-812,001, Geysers Power Company, LLC
- E-32. DOCKET# ER02-456,000, Electric Generation L.L.C.
- Miscellaneous Agenda**
- M-1. RESERVED
- Markets, Tariffs and Rates—Gas**
- G-1. OMITTED
- G-2. DOCKET# RP02-340,000, ANR Pipeline Company
- G-3. DOCKET# RP00-391,000, Mississippi Canyon Gas Pipeline, L.L.C.
OTHER#S RP00-575,000, Mississippi Canyon Gas Pipeline, L.L.C.
- G-4. DOCKET# RP00-497,000, Viking Gas Transmission Company
OTHER# RP01-47,000, Viking Gas Transmission Company
RP01-47,001, Viking Gas Transmission Company
RP01-47,002, Viking Gas Transmission Company
- G-5. DOCKET# RP00-585,000, Vector Pipeline, L.P.
OTHER#S RP00-585,001, Vector Pipeline, L.P.
RP00-586,000, Vector Pipeline, L.P.
- G-6. DOCKET# RP02-218,000, East Tennessee Natural Gas Company
- G-7. OMITTED
- G-8. DOCKET# RP00-463,002, Williston Basin Interstate Pipeline Company
OTHER#S RP00-463,003, Williston Basin Interstate Pipeline Company
RP00-600,001, Williston Basin Interstate Pipeline Company
- G-9. DOCKET# RP00-260,009, Texas Gas Transmission Corporation
- G-10. DOCKET# RP02-163,001, Florida Gas Transmission Company
OTHER#S RP02-163,002, Florida Gas Transmission Company
- G-11. DOCKET# RP93-5,040, Northwest Pipeline Corporation
- G-12. DOCKET# RP02-276,000, Iroquois Gas Transmission System, L.P.
- G-13. OMITTED
- Energy Projects—Hydro**
- H-1. DOCKET# P-2145,047, Public Utility District No. 1 of Chelan County, Washington
OTHER#S P-943 077 Public Utility District No. 1 of Chelan County, Washington
- H-2. DOCKET# UL00-3,003, Homestake Mining Company
OTHER#S UL00-4,003, Homestake Mining Company
- H-3. OMITTED
- H-4. DOCKET# P-2413,043, Georgia Power Company
- Energy Projects—Certificates**
- C-1. DOCKET# CP02-27,000, Florida Gas Transmission Company
- C-2. DOCKET# CP02-17,000, Texas Eastern Transmission, LP
OTHER#S CP02-45,000, Texas Eastern Transmission, LP
- C-3. DOCKET# CP02-25,000, Covich County Storage Company
OTHER#S CP02-29,000, Covich County Storage Company
CP02-30,000, Covich County Storage Company
- C-4. DOCKET# CP97-169,003, Alliance Pipeline L.P.
- C-5. DOCKET# CP00-40,004, Florida Gas Transmission Company
OTHER#S CP00-40,005, Florida Gas Transmission Company
CP00-40,006, Florida Gas Transmission Company
- Magalie R. Salas,**
Secretary.
[FR Doc. 02-14590 Filed 6-6-02; 8:45 am]
BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7225-8]

Agency Information Collection Activities: Proposed Collection; Comment Request; General Administrative Requirements for Assistance Programs**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed and/or continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): General Administrative Requirements for Assistance Programs, EPA ICR No. 0938.09, OMB Control No. 2030-0020, expiration December 31, 2002. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 31, 2002.

ADDRESSES: Comments may be mailed to William G. Hedling, Office of Grants and Debarment, Grants Administration Division, U.S. EPA, Ronald Reagan Building, 1300 Pennsylvania Avenue, Washington, DC 2004, Mailstop 3903R, or E-mailed to Hedling.William@epa.gov, and refer to EPA ICR No. 0938.09.

FOR FURTHER INFORMATION CONTACT: William G. Hedling at (202) 564-5377, FAX at (202) 565-2468, or E-mail to Hedling.William@epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which apply for EPA assistance.

Title: General Administrative Requirements for Assistance Programs; OMB Control No. 2030-0020; EPA ICR No. 0938.09 expiring December 31, 2002.

Abstract: The information is collected from applicants/recipients of EPA assistance to monitor adherence to the programmatic and administrative requirements of the Agency's financial assistance program. It is used to make awards, pay recipients, and collect information on how Federal funds are being spent. EPA needs this information to meet its Federal stewardship responsibilities. This Information Collection Request (ICR) renewal requests authorization for the collection of information under EPA's General

Regulation for Assistance programs, which establishes minimum management requirements for all recipients of EPA grants or cooperative agreements (assistance agreements). Recipients must respond to these information requests to obtain and/or retain a benefit (Federal funds). 40 CFR part 30, "Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations," includes the management requirements for potential grantees from non-profit organizations. 40 CFR part 31, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," includes the management responsibilities for potential state and local government grantees. These regulations include only those provisions mandated by statute, required by OMB Circulars, or added by EPA to ensure sound and effective financial assistance management. The OMB Form 83-I associated with this ICR combines all of these requirements under OMB Control Number 2030-0020. The information required by these regulations will be used by EPA award officials to make assistance awards and assistance payments and to verify that the recipient is using Federal funds appropriately to comply with OMB Circulars A-21, A-87, A-102, A-110, A-122, A-128, and A-133, which set forth the pre-award, post-award, and after-the-grant requirements. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments in order to:

- (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (iii) Enhance the quality, utility, and clarity of the information to be collected; and
- (iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The annual record keeping burden for this collection is estimated to average 181 hours per application. The estimated annual number of respondents is approximately 4,000. The estimated total burden hours on respondents is 722,050 hours. The frequency of collection is as required. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: June 3, 2002.

Betty G. Utterback,

Acting Director, Grants Administration Division.

[FR Doc. 02-14480 Filed 6-7-02; 8:45 am]

BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

[FRL 7226-4]

Agency Information collection Activities; OMB Responses**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (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 unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Susan Auby at (202) 566-1672, or email at Auby.susan@epa.gov, and please refer to the appropriate EPA Information Collection Requests (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests*OMB Approvals*

EPA ICR No. 1812.02; Safe Drinking Water Act; Annual Public Water Systems Compliance Report; was approved 09/28/2001; OMB No. 2020-0020; expires 09/30/2004.

EPA ICR No. 1977.01; National Wastewater Operator Training and Technical Assistance Program—CWA 104(g)(1); was approved 09/28/2001; OMB No. 2040-0238; expires 09/30/2004.

EPA ICR No. 1086.06; NSPS subpart KKK and LLL standards of Performance for Onshore Natural Gas Processing Plants; was approved 10/12/2001; OMB No. 2060-0120; expires 10/31/2004.

EPA ICR No. 1050.07; NSPS for Storage Vessels for Petroleum Liquids, in 40 CFR part 60, subpart Ka; was approved 10/21/2001; OMB No. 2060-0121; 10/31/2004.

EPA ICR No. 1365.06; Asbestos-Containing Materials in Schools Rule and Asbestos Model Accreditation Plan Rule (MAP); was approved 10/15/2001; OMB No. 2070-0091; expires 10/31/2004.

EPA ICR No. 1941; Proposed Information Collection Request for the Evaluation of Print STEP; was approved 10/15/2001; OMB No. 2020-0023; expires 10/31/2004.

EPA ICR No. 1139.06; TSCA Section 4 Test Rules, Consent Orders, Test Rule Exemptions, and Voluntary Data Submission; was approved 10/15/2001; OMB No. 2070-0033; expires 10/31/2004.

EPA ICR No. 1928.03 (later this ICR No. was changed to 2052.01); Information Collection Request for Long Term 1 Enhanced Surface Water Treatment Rule (final Rule); was approved 10/25/2001; OMB No. 2040-0229; expires 10/31/2004.

EPA ICR No. 1230.10; Prevention of Significant Deterioration and Nonattainment Area New Source Review; in 40 CFR parts 51 & 52; was approved 10/29/2001; OMB No. 2060-0003; expires 11/30/2002.

EPA ICR No. 1246.08; Rule Related Replacement ICR to the Existing ICR entitled "Reporting and Recordkeeping for Asbestos Abatement Worker Protection"; in 40 CFR part 763, subpart G; was approved 07/23/2001; OMB No. 2070-0072; expires 07/31/2004.

EPA ICR No. 2021.01; Compliance Assistance Surveys for the Marina, Metal Finishing, Construction Site, and Auto Salvage Yard Sectors; was approved 08/23/2001; OMB No. 2020-0022; expires 08/31/2004.

EPA ICR No. 1063.08; NSPS for Sewage Sludge Treatment Plant Incineration; in 40 CFR part 60, subpart O; was approved 09/06/2001; OMB No. 2060-0035; expires 09/30/2004.

EPA ICR No. 1136.06; NSPS Standards of Performance for VOC Emissions from Petroleum Refinery Wastewater Systems—Reporting and Recordkeeping; in 40 CFR part 60, subpart QQQ; was approved 09/06/2001; OMB No. 2060-0172; expires 09/30/2004.

EPA ICR No. 1504.04; Data Generation for Pesticide Reregistration Activities; in 40 CFR part 158; was approved 09/07/2001; OMB No. 2070-0107; expires 09/30/2004.

EPA ICR No. 1911.01; Data Acquisition for Anticipated Residue and Percent Crop Treated; was approved 09/07/2001; OMB No. 2070-0164; expires 09/30/2004.

EPA ICR No. 1680.03; Information Collection Request for the Combined Sewer Overflow Policy; was approved 10/15/2001; OMB No. 2040-0170; expires 10/31/2004.

Short Term Extensions

EPA ICR No. 1432.20; Recordkeeping and Periodic Reporting of the Production, Import, Recycling, Destruction, Transshipment and Feedstock Use of Ozone—Depleting Substances; in 40 CFR part 82, subpart A; OMB No. 2060-0170; on 09/28/2001 OMB extended the expiration date through 12/31/2001.

EPA ICR No. 1759.02; Pesticides Worker Protection Standard Training and Notification; in 40 CFR part 170; OMB No. 2070-0148; on 09/28/2001 OMB extended the expiration date through 12/31/2001.

Comment Filed and Continued

EPA ICR No. 0783.41; Vehicle Emission Certification and Fuel Economy Compliance (Proposed Rule—Vehicle and Engine Service Information); in 40 CFR parts 85, 86, 600; OMB No. 2060-0104; on 10/12/2001 OMB filed a comment and continue action pending review of the final rule.

Comments Filed

EPA ICR No. 2014.01; Reporting and Recordkeeping Requirements of the HCFC (hydro-chlorofluorocarbon) allowance system; on 10/16/2001 OMB filed a comment.

EPA ICR No. 2002.02; Cross-Media Electronic Reporting and Recordkeeping Rule (Proposed Rule), on 10/25/2001 OMB filed a comment.

Withdrawn

EPA ICR No. 1932.01; Information Collection Request for Proposed NPDES Requirements for Municipal Sanitary Sewers, Municipal Satellite Collection Systems and Sanitary Sewer Outflows; EPA withdrew it on 10/18/2001.

EPA ICR No. 1879.01; Recordkeeping and Reporting Requirements under the EPA's Energy Star Homes Program: This ICR was withdrawn at EPA's request on 10/31/2001.

Disapproved

EPA ICR No. 1980.01; Monitoring Alternatives and the Pollution Prevention Alternative for Effluent Limitations Guidelines and Standards for the Metal Products and Machinery Point Source Category in 40 CFR part 438; on 10/18/2001 OMB disapproved the ICR.

Notice of Change

EPA ICR No. 0977.05; Steam-Electric Plant Operation and Design Report; OMB No. 2080-0018; on 09/05/2001 OMB changed the expiration date to 09/30/2001.

Dated: May 29, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02-14485 Filed 6-7-02; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7225-9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, Aftermarket Catalytic Converter Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Title: Aftermarket Catalytic Converter Policy, OMB Control Number 2060-0135, expiration date May 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 10, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 1292.06 and OMB Control

No. 2060-0135, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566-1672, by E-Mail at Auby.Susan@epamail.epa.gov or download off the Internet at <http://www.epa.gov/icr> and refer to EPA ICR No. 1292.06 for technical questions about the ICR contact Jack McLaughlin at 303-336-9513.

SUPPLEMENTARY INFORMATION:

Title: Aftermarket Catalytic Converter Policy, OMB Control Number 2060-0135, EPA ICR Number 1292.06, expiration date May 31, 2002. This is a request for extension of a currently approved collection.

Abstract: The aftermarket catalytic converter policy allows aftermarket automobile catalytic converter manufacturers and reconditioners to compete with the automobile manufacturers for the aftermarket catalytic converter replacement market. Without this policy, it would be illegal to sell or install aftermarket catalytic converters that do not conform exactly to the automobile manufacturers' original equipment (OE) versions of these parts.

Manufacturers: On a one-time basis for each type or line of converter manufactured: Manufacturers supply information identifying the supplier, and information regarding the physical specifications of each catalytic converter line produced, and information regarding pre-production testing of the converters that show they meet standards for certain specified vehicle applications (a single converter line can be used on a large number of vehicle applications). Once production has begun the manufacturer must submit to EPA on a semi-annual basis: the number of each type of catalyst manufactured and a summary of information contained on warranty cards or, at the option of the respondent, copies of warranty cards for all converters sold.

Reconditioners: On a one-time basis: Reconditioners provide information on the identity of company and a description of the test bench used for testing used catalytic converters and intended vehicle application(s) for each converter type. On a semi-annual basis:

Reconditioners provide names and addresses of distributors along with the number of each type of converter sold to each distributor. All used converters must be tested individually to ensure they are still functional.

Installers of aftermarket converters: Installers have no reporting requirements. They simply fill out the warranty card and hand it to the retail customer. They must also include a brief statement with each invoice stating the need for replacing the original converter. They also tag each removed converter with a reference to the invoice for repair. The invoices are required to be kept for 6 months. The tagged converters are required to be kept for 15 days.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on January 3, 2002. One comment was received and this was addressed in the supporting statement.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.5 hours per response (60,180 total burden hours divided by 30,020 total respondents). Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers of new aftermarket catalytic converters, reconditioners of used OE catalytic converters, and muffler and vehicle repair shops.

Estimated Number of Respondents: 30,020.

Frequency of Response: Semi-annually.

Estimated Total Annual Hour Burden: 111,308.

Estimated Total Annualized Capital, O&M Cost Burden: \$822.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1292.06 and OMB Control No. 2060-0135 in any correspondence.

Dated: May 30, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02-14481 Filed 6-7-02; 8:45 am]

BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7226-1]

Agency Information Collection Activities; Submission to OMB; Comment Request; EPA ICR No. 0277.13/OMB Control No. 2070-0060; Application for New and Amended Pesticide Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Application for New and Amended Pesticide Registration; EPA ICR No. 0277.13; OMB Control No. 2070-0060. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs. The **Federal Register** document, required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on September 18, 2001 (66 FR 48130). EPA received no comments on this ICR during the 60-day comment period.

DATES: Additional comments may be submitted on or before July 10, 2002.

FOR FURTHER INFORMATION CONTACT: Contact Susan Auby at EPA by phone at (202) 566-1672, by email at auby.susan@epa.gov, or access the ICR at <http://www.epa.gov/icr/icr.htm> and refer to EPA ICR No. 0277.13; OMB Control No. 2070-0060.

ADDRESSES: Send your comments, referencing the proper ICR numbers to:

Ms. Susan Auby, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Ave, NW., Washington, DC 20460; and send a copy of your comments to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

ICR Title: Application for New and Amended Pesticide Registration (EPA ICR 0277.13, OMB Control No. 2070-0060).

ICR Status: This is a request for extension of an existing approved collection that is currently scheduled to expire on April 30, 2002. EPA is asking OMB to approve this ICR for three years. Under 5 CFR 1320.12(b)(2), the Agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB.

Abstract: This information collection activity is designed to provide EPA with necessary data to evaluate an application of a pesticide product as required under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C. 136). Under FIFRA, EPA must evaluate pesticides thoroughly before they can be marketed and used in the United States to ensure that they will not pose unreasonable adverse effects to human health and the environment. Pesticides that meet this test are granted a license or "registration" which permits their distribution, sale and use according to requirements set by EPA to protect human health and the environment. An individual or entity wanting to obtain a registration for a pesticide product must submit an application package consisting of information relating to the identity and composition of the product, proposed labeling, and supporting data (or compensation for others' data) for the product as outlined in 40 CFR part 158. The EPA bases registration decisions for pesticides on its evaluation of a battery of test data provided primarily by applicants for registration. Required studies include testing to show whether a pesticide has the potential to cause unreasonable adverse human health or environmental effects.

Burden Statement: The annual "respondent" burden for this ICR is estimated to be 152,974 hours, with individual respondent burden ranging from 14 hours to 194 hours per submission, depending upon the type of registration activity involved. According to the Paperwork Reduction Act (PRA), "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. The Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to approval under the PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

The following is a summary of the burden estimates taken from the ICR:

Respondents/affected entities: Pesticide Manufacturers Applying for Registration.

Estimated total number of potential respondents: 2,100.

Frequency of response: As needed.

Estimated total/average number of responses for each respondent: 3.

Estimated total annual burden hours: 152,974

Estimated total annual non-labor costs: \$0.

Changes in the ICR Since the Last Approval: The total annual burden associated with this ICR has decreased by 34,666 hours, from 187,640 hours in the previous ICR to 152,974 hours for this renewal ICR. The change is primarily related to a decrease in the number of responses required by one of the pesticide registration divisions, and is described in detail in the ICR.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: May 29, 2002

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02-14482 Filed 6-7-02; 8:45 am]

BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request, Stratospheric Ozone Protection, Servicing of Motor Vehicle Air Conditioners; 40 CFR Part 82, Subpart B (82.30 et seq.)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Stratospheric Ozone Protection, Servicing of Motor Vehicle Air Conditioners, OMB Control Number 2060-0247, expiration date May 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 10, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 1617.04 and OMB Control No. 2060-0247, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566-1672, by E-mail at Auby.susan@epamail.epa.gov, or download off the Internet at <http://www.epa.gov/icr> and refer to EPA ICR No.1617.04. For technical questions about the ICR contact Nancy Smagin by phone at (202) 564-9126, by E-mail at smagin.nancy@epamail.epa.gov, or by mail Global at Programs Division (Mail Code 6205-J), 1200 Pennsylvania Avenue NW., Washington, DC 20460-0001.

SUPPLEMENTARY INFORMATION:

Title: Stratospheric Ozone Protection, Servicing of Motor Vehicle Air Conditioners, OMB Control Number 2060-0247, EPA ICR Number 1617.04, expiration date May 31, 2002. This is a request for extension of a currently approved collection.

Abstract: In 1992, EPA developed regulations under section 609 of the Clean Air Act Amendments of 1990 (Act) for the recycling of chlorofluorocarbons in motor vehicle air conditioners. These regulations were published in 57 FR 31240, and are codified at 40 CFR part 82, subpart B.

Automotive technicians are required to be certified in the proper use of recycling equipment for servicing motor vehicle air conditioners. The Global Programs Division (GPD) requires that certification programs send full sets of their training materials to EPA for approval and that technicians provide a copy of their testing program.

The GPD requires independent laboratories to submit an application that proves their general capacity to certify equipment to meet the Society of Automotive Engineers (SAE) J standards for recycled refrigerant. An independent laboratory that is interested in testing recycling and recovery equipment must submit an application to the GPD that includes a list of testing procedures and equipment that will be used in testing.

Motor vehicle air conditioner servicers must submit to the Administrator on a one-time basis a certificate that provides the following information: The name of the equipment owner, the address of the service establishment where the equipment will be used, and the make, model, year, and serial number of the equipment. Establishments that own recover-only equipment must maintain records of the name and address of the facility that is reclaiming their refrigerant.

Any person who owns approved refrigerant recovery or recycling equipment must retain records demonstrating that all persons authorized to operate the equipment are currently certified technician. Any person who sells or distributes refrigerant that is in a container of less than 20 pounds must verify that the purchaser is a certified technician, unless the purchase of small containers is for resale only. In that case, the seller must obtain a written statement from the purchaser that the containers are for resale only, and must indicate the purchaser's name and business address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control

number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on December 20, 2001; no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 8 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to, or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and collecting, validating, and verifying information, processing and maintaining information and, disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: New and used motor vehicle dealers, gasoline service stations, truck rental and leasing without drivers, passenger car rental, top, body, upholstery repair and paint shops, general automotive repair shops, automotive repair shops not elsewhere classified.

Estimated Number of Respondents: 24,012.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 6,882.

Estimated Total Annualized Non Labor Cost: \$0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1617.04 and OMB Control No. 2060-0247 in any correspondence.

Dated: May 29, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02-14483 Filed 6-7-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7226-3]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; RCRA Expanded Public Participation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: RCRA Expanded Public Participation, OMB Control Number 2050-0149, expiration date: May 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 10, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 1688.04 and OMB Control No. 2050-0149, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566-1672, by E-mail at auby.susan@epamail.epa.gov, or download off the Internet at <http://www.epa.gov/icr> and refer to EPA ICR No. 1688.04. For technical questions about the ICR contact Toshia King at 703-308-7033 in the Office of Solid Waste.

SUPPLEMENTARY INFORMATION:

Title: RCRA Expanded Public Participation (OMB Control No. 2050-0149; EPA ICR No. 1688.04) expiring May 31, 2002. This is a request for extension of a currently approved collection.

Abstract: Section 7004(b) of RCRA gives EPA broad authority to provide for, encourage, and assist public participation in the development, revision, implementation, and enforcement of any regulation,

guideline, information, or program under RCRA. In addition, the statute specifies certain public notices (i.e., radio, newspaper, and a letter to relevant agencies) that EPA must provide before issuing any RCRA permit. The statute also establishes a process by which the public can dispute a permit and request a public hearing to discuss it. EPA carries out much of its RCRA public involvement at 40 CFR parts 124 and 270.

In 1995, EPA expanded the public participation requirements under the RCRA program by promulgating the RCRA Expanded Public Participation Rule (60 FR 63417; December 11, 1995). The rule responded to calls by the Administration and stakeholders (e.g., States and private citizens) to provide earlier and better public participation in EPA's permitting programs, including procedures for more timely information sharing. In particular, the rule requires earlier public involvement in the permitting process (e.g., pre-application meetings), expanded public notice for significant events (e.g., notices of upcoming trial burns), and more opportunities for the exchange of permitting information (e.g., information repository).

The required activities and information are needed to help assure timely and effective public participation in the permitting process. The requirements are intended to provide equal access to information to all stakeholders in the permitting process: The permitting agency, the permit applicant, and the community where a facility is located. Some facilities may be required to develop information repositories to allow for expanded public participation and access to detailed facility information as part of the permitting process.

EPA sought to reduce the reporting frequency to the minimum that is necessary to ensure compliance with the rule. It would not be possible to collect this information less frequently and still assure that the requirements of permit and public involvement regulations are met by owners or operators. The reporting frequency is essential to assure that any changes in the trial burn plans or in the anticipated permit application contents are made known to EPA and to the public. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on

this collection of information was published on January 22, 2002 (67 FR 2878); no comments were received. Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 91 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Facility owners or operators applying for an initial RCRA Part B permit or a Part B permit renewal.

Estimated Number of Respondents: 33.

Frequency of Response: On occasion.
Estimated Total Annual Hour Burden: 3,005 hours.

Estimated Total Annualized Capital, O&M Cost Burden: \$4.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1688.04 and OMB Control No. 2050-0149 in any correspondence.

Dated: May 29, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02-14484 Filed 6-7-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7226-5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Pesticide Registration Application, Notification and Report for Pesticide-Producing Establishments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3507(a)(1)(D)), this document announces that the Information Collection Request (ICR) for the Application for Registration of Pesticide-Producing Establishments, and the Pesticides Report for Pesticide-Producing Establishments described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden and cost; and it includes the forms. Also included is the Notification of Registration of Pesticide-Producing Establishments, which EPA uses to notify the company of their newly registered pesticide-producing establishments, and the assignment of their Establishment Number(s).

DATES: Comments must be submitted on or before July 10, 2002.

ADDRESSES: Send comments, referencing EPA ICR Number 0160.07 and OMB Control Number 2070-0078, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION OR A COPY: Contact Susan Auby at EPA by phone at (202) 566-1672, by email at auby.susan@epa.gov, or download off the Internet at <http://www.epa.gov/icr> and refer to EPA ICR No. 0160.07.

SUPPLEMENTARY INFORMATION:

Title: Pesticide Registration Application, Notification and Report for Pesticide-Producing Establishments; (OMB Control No. 2070-0078; EPA ICR No. 0160.07).

Abstract: The U.S. Environmental Protection Agency (EPA) must collect information on pesticide-producing establishments in order to meet the statutory requirements of Section 7 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). FIFRA requires producers of pesticide products, active ingredients, and devices to register their establishments with EPA and to submit an initial report, and thereafter, annually report on the types and amounts of products produced. The purpose of this notice is to request renewal of the collection process and reporting processes for the

Application for Registration of Pesticide-Producing Establishments (EPA Form 3540-8), the Notification of Registration of Pesticide-Producing Establishments (EPA Form 3540-8A), and the Pesticides Report for Pesticide-Producing Establishments (EPA Form 3540-16).

Application for Registration of Pesticide-Producing Establishments information, collected on EPA Form 3540-8, is a one-time requirement for all pesticide-producing establishments. The reporting of pesticide production information collected on the Pesticides Report for Pesticide-Producing Establishments, EPA Form 3540-16, is required within 30 days of receipt of the Notification of Registration of Pesticide-Producing Establishments (EPA Form 3540-8A); and then annually thereafter, on or before March 1. The information is entered and stored in EPA's Office of Enforcement and Compliance Assurance (OECA)/Office of Compliance (OC) Section Seven Tracking System (SSTS), a computerized data processing and record-keeping system.

The Office of Compliance/OECA collects the establishment and pesticide production information for compliance oversight and risk assessment. The information is used by EPA Regional pesticide enforcement and compliance staffs, OECA, and the Office of Pesticide Programs (OPP) within the Office of Prevention, Pesticides and Toxic Substances (OPPTS), as well as the U.S. Department of Agriculture (USDA), the Food and Drug Administration (FDA), other Federal agencies, States under Cooperative Enforcement Agreements, and the public.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 11/26/2001 (66 FR 59017), and no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to be an average of 18 minutes for a one time response for the Application for Registration of Pesticide-Producing Establishments (EPA Form 3540-8), and 1 hour and 26 minutes for the annual yearly response for the Pesticides Report for Pesticide-Producing Establishments (EPA Form 3540-16). There is no public burden associated with the Notification of

Registration of Pesticide-Producing Establishments (EPA Form 3540-8A) because EPA completes this form. 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. The burden associated with this ICR is described below:

Respondents/Affected Entities:

Pesticide producing establishments.

Estimated Number of Respondents: 12,412.

Frequency of Response: One time and yearly.

Estimated Total Annual Hour Burden: 17,959 hours.

Estimated Total Annualized Cost Burden: \$0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 0160.07 and OMB Control No. 2070-0078 in any correspondence.

Dated: May 29, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02-14486 Filed 6-7-02; 8:45 am]

BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

[OPP-2002-0114; FRL-7183-4]

Exposure Modeling Work Group; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Exposure Modeling Work Group (EMWG) will hold a 1-day meeting on June 18, 2002. This notice announces the location and time for the meeting and sets forth the tentative agenda topics.

DATE: The meeting will be held on June 18, 2002, from 9 a.m. to 3 p.m.

ADDRESSES: This meeting will be held at the George Washington Carver Center, Room 4223, 5601 Sunnyside Ave., Beltsville, MD.

FOR FURTHER INFORMATION CONTACT:

James N. Carleton, Environmental Fate and Effects Division (7507C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305-5736; fax number: (703) 308-6309; e-mail address: carleton.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to Tribes with pesticide programs or pesticide interests. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the 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>.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP-2002-0114. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which

includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis 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. Tentative Agenda:

This unit provides tentative agenda topics for the 1-day meeting.

1. Welcome and introductions.
2. Old action items.
3. Discussion of purpose of EMWG.
4. Update on screening concentration in ground water (SCI-GROW).
5. Update on basin-scale modeling.
6. Fate database structure.
7. Rice modeling and new Environmental Fate Effects Division Model.
8. Update on Watershed Regression for Pesticides (WARP).
9. Overview of EFED's procedure for developing new scenarios.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 5, 2002.

Elizabeth Leovey,

Acting Director, Environmental Fate and Effects Division, Office of Pesticide Programs.
[FR Doc. 02-14618 Filed 6-6-02; 1:50 pm]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[OPP-2002-0109; FRL-7183-3]

Technical Briefing on the Draft Revised Organophosphate Pesticide Cumulative Risk Assessment; Notice of Public Meeting; Changes and Additions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA previously announced in the *Federal Register* of May 15, 2002 (67 FR 34707) (FRL-6836-3), a public technical briefing on the revisions to the preliminary organophosphate pesticide cumulative risk assessment, followed the next day by a public meeting of the CARAT Workgroup on Cumulative Risk Assessment/Public Participation Process. The location of the CARAT Cumulative Risk Assessment/Public Participation Process Workgroup meeting on June 19, 2002, has been changed to be the same as that of the

technical briefing. In addition, a meeting of the CARAT Workgroup on Transition has been added on June 20, 2002. All three meetings will be held in the same location.

DATES: The technical briefing will be held on Tuesday, June 18, 2002, from 9 a.m. to 5 p.m. In addition, EPA and the U.S. Department of Agriculture will hold public meetings of two CARAT Workgroups: Cumulative Risk Assessment/Public Participation Process Workgroup on Wednesday, June 19, 2002, from 9 a.m. to 4 p.m., and the Workgroup on Transition on Thursday, June 20, 2002, from 1 p.m. to 5 p.m.

ADDRESSES: The technical briefing and both CARAT Workgroup meetings will be held at the Holiday Inn Select, 480 King St., Old Town Alexandria, VA. The telephone number for the hotel is (703) 549-6080. The hotel is located about 10 blocks from the King Street Metro Station.

FOR FURTHER INFORMATION CONTACT: By mail: Karen Angulo, Special Review and Registration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703-308-8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. The Agency believes that a wide range of stakeholders will be interested in technical briefings on organophosphate pesticides, including environmental, human health, and agricultural advocates, the chemical industry, pesticide users, and members of the public interested in the use of pesticides on food. 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 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>.

To access information about organophosphate pesticides, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at <http://www.epa.gov/pesticides/op>: In addition, information about the cumulative process and the preliminary organophosphate cumulative risk assessment documents are found at <http://www.epa.gov/pesticides/cumulative>.

2. *In person.* The Agency has established an official record under docket ID number OPP-2002-0109. 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. How Can I Request to Participate in this Meeting?

This meeting is open to the public. Outside statements by observers are welcome. Verbal statements will be limited to 3 to 5 minutes, and it is preferred that only one person per organization present the statement. Any person who wishes to file a written statement may do so immediately before or after the meeting. These statements will become part of the public version of the official record and will be available for public inspection at the address listed in Unit I.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: June 4, 2002.

Lois A. Rossi,

Director, Special Review and Reregistration
Division, Office of Pesticide Programs.

[FR Doc. 02-14617 Filed 6-6-02; 1:51 pm]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7228-2]

New York State Prohibition on Marine Discharges of Vessel Sewage; Receipt of Petition and Final Determination

Notice is hereby given that a petition was received from the State of New York on July 5, 2001 requesting a determination by the Regional Administrator, Environmental Protection Agency (EPA), pursuant to section 312(f) of Public Law 92-500, as amended by Public Law 95-217 and Public Law 100-4 (the Clean Water Act), that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of the Peconic Estuary, County of Suffolk, State of New York. The Towns of East Hampton, Riverhead, Shelter Island, Southampton, and Southold, and the Villages of Dering Harbor, Greenport, North Haven, and Sag Harbor are seeking to establish a New York State Designated No-Discharge Zone (NDZ) for the open waters, harbors and creeks on the Peconic Estuary, Suffolk County, New York west of a line from Orient Point (41.16133, -72.23065) to Montauk Point (41.07312, -71.8570).

On March 6, 2002, EPA published a Receipt of Petition and Tentative Determination and accepted comments from the public for a thirty (30) day period. EPA received letters from the following individuals or communities:

Honorable David E. Kapell, Mayor,
Village of Greenport, 236 Third Street,
Greenport, New York 11944.

Paul W. Esterle, 2971 Broad Street,
#155, Bristol, Tennessee 37620-3461.

Rameshwar Das, 61 Shoridge, East
Hampton, New York 11937.

Two of the comment letters expressed support for the establishment of the NDZ, stating that the NDZ was important to protect fishing and water recreational resources. One letter stated that the existing NDZ in East Hampton is a valuable component of public awareness for ensuring the health of the estuary and that it served to bring the stakeholders in the estuary into the process.

One comment letter objected to establishing a NDZ and raised two

general concerns. In explaining the first concern, the commentor pointed out that the existing national standards already prohibit the discharge of untreated sewage from vessels and argued that the quality of treated wastes discharged from marine sanitation devices (MSDs) was better than wastes discharged from on-shore sewage treatment systems.

In response, EPA acknowledges the accuracy of the first point regarding the existing national prohibition against untreated discharges from MSDs in coastal waters such as the Peconic Estuary. However, EPA questions the claim that MSDs produce wastewater that is cleaner than the wastes discharged from on-shore sewage treatment plants, and EPA notes that the justification provided in the letter to support the claim is anecdotal. Further, EPA is not aware of any studies conducted on the discharges from existing MSDs that evaluate the efficacy of the units after years of operation. Sewage treatment plants, on the other hand, are typically required to reduce biochemical oxygen demand and total suspended solids by 85%, and are generally subject to routine monitoring and reporting requirements. In addition, many sewage treatment plants are required to provide disinfection, which commonly results in effluent quality less than 100 colonies per 100 milliliter for fecal coliform, which is better than the standards that MSDs are required to meet.

The second concern raised in the letter challenged the conclusion in the tentative determination that sufficient pumpout facilities were available for boaters. The commentor cites an article that was published in *Cruising World* regarding the Rhode Island coastal waters NDZ. The article recounts a boater's three day attempt, in Rhode Island, to locate a functioning pumpout facility. The article alleges that many of the pumpouts in the waters of Rhode Island are in disrepair or not accessible. Based on their independent surveys, the State of Rhode Island and Save the Bay disagree with the conclusion of the *Cruising World* article.

EPA does not see the relevance of the article on the Rhode Island NDZ to the number of pumpouts and vessel populations in the Peconic Estuary. Based upon the information provided in the application, there are more than adequate pumpout facilities available to the boaters. While neither agreeing or disagreeing with the article conclusion, EPA does recognize that proper operation and maintenance of the pumpout facilities are essential to the successful implementation of the NDZ.

In further response to the comment letter, the Clean Water Act (Sec. 314(f)(3)) authorizes a State to completely prohibit the discharge from all vessels of any sewage, whether treated or not, by making a written application to EPA. Upon receipt of an application, EPA must determine whether adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available. The State of New York has applied to EPA in accordance with the Clean Water Act and EPA has determined that such facilities are reasonably available. The criteria for approval of the NDZ application is the adequacy and availability of the pumpouts for the number and size of vessels operating in the Peconic Estuary. This criteria has been satisfied.

This determination is based on the following information which was included in the application submitted to EPA by the State of New York and the Towns of East Hampton, Riverhead, Shelter Island, Southampton, and Southold, and the Villages of Dering Harbor, Greenport, North Haven, and Sag Harbor. The open waters, harbors and creeks of the Peconic Estuary support significant shellfisheries, fish spawning, nursery and feeding areas, primary contact recreation such as swimming, and are or have within them State designated Significant Coastal Fish and Wildlife Habitats. Vessel counts indicate that there are approximately 7,000 to 11,300 boats in the area on an average summer weekend.

These areas provide important natural and recreational resources that contribute significantly to the local, regional and state economy and the protection and enhancement of these waters is crucial to maintaining the natural resource values and economic viability of traditional maritime commercial and recreational activities.

A New York State Designated No-Discharge Zone has already been established in the Town of East Hampton (1998) for the enclosed harbors and creeks on the Peconic Estuary from the Sag Harbor Village line to Montauk Point, Town of East Hampton, Suffolk County, New York. The existing NDZ includes Northwest Creek, Accabonac Harbor, Three Mile Harbor, Napeague Harbor, Hog Creek and Lake Montauk.

For many years, most of the Peconic Estuary was open for shellfishing. However, beginning in the mid-1980's, the creeks and embayments experienced partial seasonal closures due to coliform bacteria levels. At present, the major creeks and embayments experience closure on a year round or a seasonal

basis due to high levels of coliform bacteria in the water. Although vessel waste may be a relatively small contributor to marine pollution in general in the Peconic Estuary, pollution from boats has been identified in the New York State Priority Waterbodies List as one of several key pollution sources that has led to shellfish being classified as an impaired use in water quality classifications within the Peconic Estuary.

According to the State's petition, the maximum daily vessel population for the waters of the Peconic Estuary is 11,247 vessels which are docked or moored. An inventory was developed including the number of recreational, commercial and estimated transient vessels that occupy the estuary. The following table summarizes the location of pumpout facilities and vessel populations:

Waterbody	Vessels	Pumpouts
Orient Harbor	281	0
Greenport Harbor	1026	2
Southold Bay	1319	4
Hog Neck Bay ..	251	0
Cutchogue Harbor Complex ..	699	2
Southold	449	2
Flanders Bay Complex	572	4
Red Creek Pond Cold Springs Pond	187	0
Bullhead Bay/Sebonac Complex	341	3
North Sea Harbor	76	1
Noyack Sea Harbor	253	0
Sag Harbor Complex	300	0
Three Mile Harbor	1867	2
Accabonac Harbor	1262	8
Napeague Harbor	56	0
Lake Montauk ...	20	0
Dering Harbor ...	1274	6
Coecles Harbor	381	1
West Neck Harbor	287	1
	346	0
Total	11247	36

The ratio of boats to pumpout facilities has been based on the total number of vessels which could be expected. With thirty shore-side pumpout facilities and six pumpout vessel available to boaters, the ratio of docked or moored boats (including transients) is approximately 311 vessels per pumpout. Standard guidelines refer

to acceptable ratios failing in the range of 300 to 600 vessels per pumpout.

There are commercial vessel operators active in and around the Peconic Estuary. These include the Cross Sound Ferry, the Plum Island Ferry, the Shelter Island Ferry and the commercial fishing fleets which operate out of Greenport and East Hampton. Cross Sound Ferry has a fleet of seven vessels. Six of these accommodate autos, trucks, buses and passengers. Cross Sound Ferry also offers high speed ferry service on its passenger only vessel, Sea Jet I. The ferries run hourly from each location, generally between 7 a.m. and 9 p.m., although the schedule varies with the season and at holidays. All of the Cross Sound Ferry fleet have holding tanks. These are pumped out at its facility in New London. Waste is emptied into the sewer system for treatment at the New London Sewage Treatment Plant. The Plum Island Ferry operates three vessels between Orient Point and the USDA facility on Plum Island. Vessel waste from the ferries is pumped out and treated at the sewage treatment facility at Plum Island.

Two vehicle ferries run between Shelter Island and the mainland. The North Ferry Co., Inc. provides ferry service between the Village of Greenport and the Town of Shelter Island. The North Ferry operates four 100-ton, 90-foot-long ferries, each capable of carrying cars, trucks, bicycles, and passengers. The ferry operates between 5:40 a.m. and 11:45 p.m., running every 15 minutes between 7:15 a.m. and 10:15 p.m., with additional trips on holiday weekends. No restroom facilities are on board.

South Ferry Inc. of Shelter Island provides ferry service between the Town of Shelter Island and the Village of North Haven. The South Ferry operates 3 ferries, each capable of carrying cars, trucks, bicycles, and passengers. The ferry operates between 6 a.m. and 11:45 p.m., running every 10-12 minutes, with additional trips on holiday weekends. No restroom facilities are on board.

Greenport is home to a commercial fishing fleet. Although subject to turnover and change, the fleet has an estimated 16 vessels. The Village of Greenport Harbor Management Plan (December 1998) identified 3 bay druggers operating out of Stirling Basin and 11 trawlers and 2 scallopers operating from facilities in Greenport Harbor, including Coopers, Greenport Yacht and Shipbuilding and the Village of Greenport's commercial fishing dock. The Greenport Seafood Dock and Market and the Greenport Fish factory provide facilities for the unloading and

distribution of fish and are used by both local and offshore fleets. The Village's commercial fishing dock, known as the railroad dock, is a layover facility for commercial craft and is not a full service facility. Discussions with the commercial fishing fleet indicate that they discharge holding tanks outside the three mile limit.

Commercial fishing facilities in East Hampton are concentrated in Three Mile Harbor and Lake Montauk. Data from the Town of East Hampton Draft LWRP (Feb. 1999) indicate that the Town's Commercial Dock at the end of Gann Road on Three Mile Harbor serves 5-6 bay trawlers, 3-5 lobster boats and three or more trap fishermen. Lake Montauk is an important commercial fishing center and has an extensive and varied fleet. Although subject to turnover and change, the fleet has at times comprised as many as 44 ground fish trawlers, 12 inshore and 7 offshore lobster boats, and 53 long-liners, including as many as 30 transient boats from other areas of the East Coast (A. T. Kearney, Development of a Commercial Fisheries Industry Strategy for the State of New York, 1989). Commercial dock space is available at two municipal and four private docks on Star Island and on West Lake Drive, two facilities on East Lake Drive and two facilities on the west side of the Inlet. Discussions with the commercial fishing fleet indicate that they discharge holding tanks outside the three mile limit.

There is one recreational party fishing boat that operates out of Greenport, the Peconic Star II. It docks at the Mitchell site and has a capacity for up to 150 persons. This vessel has two 60 gallon holding tanks and these are pumped out by a septic truck. The Peconic Queen operates out of the Peconic River in Riverhead and tours the estuary. This vessel has a holding tank and pumps out at the Town of Riverhead pumpout in downtown Riverhead. Montauk is also home to charter boats for offshore sport fishing and the Viking passenger ferry fleet. Interviews indicate that these vessels discharge holding tanks outside the three mile limit.

The EPA hereby makes a final affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Peconic Estuary in the County of Suffolk, New York. This final determination on this matter follows a 30-day period for public comment and results in a New York State prohibition of any sewage discharges from vessels in the Peconic Estuary.

Based on this EPA determination, the Peconic Estuary automatically becomes

a State designated No-Discharge Zone, pursuant to Section 33.e.1. of the New York State Navigation Law. Within the No-Discharge Zone, discharges from marine toilets are prohibited under Section 33.e.2 of the State Navigation Law, and marine sanitation devices on board vessels operated in a No-Discharge Zone must be secured to prevent discharges. This statute may be enforced by any police officer or peace officer acting pursuant to their special duties.

Dated: May 21, 2002.

Jane M. Kenny,

Regional Administrator, Region II.

[FR Doc. 02-14495 Filed 6-7-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7225-2]

Public Water System Supervision Program Revisions for Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval and solicitation of requests for a public hearing.

SUMMARY: Notice is hereby given that Iowa is revising its approved Public Water System Supervision Program. The EPA has determined that these revisions are no less stringent than the corresponding Federal regulations. Therefore, the EPA intends to approve these program revisions. All interested parties may request a public hearing on the approval.

DATES: A request for a public hearing must be submitted in writing by July 10, 2002, to the Regional Administrator at the EPA Region 7 address.

ADDRESSES: Copies of documents related to this determination are available for inspection between the hours of 9 a.m. and 3 p.m., Monday through Friday, at the following locations: EPA Region 7, 901 N. 5th Street, Kansas City, Kansas, 66101, and Iowa Department of Natural Resources, Water Supply Section, 401 SW 7th Street, Suite "M", Des Moines, Iowa, 50309.

FOR FURTHER INFORMATION CONTACT: Stan Calow, 913-551-7798.

SUPPLEMENTARY INFORMATION: Iowa has adopted (1) the Consumer Confidence Report regulations that require community water systems to prepare and provide to their customers annual consumer confidence reports on the quality of the water delivered by the systems (63 FR 44511-44536, August

19, 1998); (2) a revised definition of "public water systems" (63 FR 23361-23368, April 28, 1998); (3) the Analytical Methods for Chemical and Microbiological Contaminants and Revisions to Laboratory Certification Requirements (64 FR 67449-67467, December 1, 1998); (4) an Interim Enhanced Surface Water Treatment Rule to improve control of microbial pathogens in drinking water, including the protozoan, *Cryptosporidium* (63 FR 69477-69521, December 16, 1998); and (5) a Stage 1 Disinfection/ Disinfection By-Products Rule, setting requirements to limit the formation of chemical disinfectant by-products in drinking water (63 FR 69389-69476, December 16, 1998).

Any request for a public hearing must include the following information: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made by July 10, 2002, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination will become final and effective on July 10, 2002.

Authority: 40 CFR 142.12.

Dated: May 28, 2002.

William Rice,

Acting Administrator, Region 7.

[FR Doc. 02-14210 Filed 6-7-02; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2555]

Petition for Reconsideration of Action in Rulemaking Proceeding

June 4, 2002.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this

document is available for viewing and copying in Room CY-A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863-2893. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment FM Table of Allotments, Order to Show Cause (MM Docket No. 89-120); Amendment FM Table of Allotments, Order to Show Cause (MM Docket No. 91-352); Amendment of FM Table of Allotments (MM Docket No. 90-195); Amendment of the FM Table of Allotments (MM Docket No. 92-214).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 02-14461 Filed 6-7-02; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL ELECTION COMMISSION

Sunshine Act; Meeting Notice

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, June 13, 2002, meeting open to the public.

This meeting has been cancelled.

PERSON TO CONTACT FOR INFORMATION:

Mr. Ron Harris, Press Officer,
Telephone: (202) 694-1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02-14676 Filed 6-6-02; 2:44 pm]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 02-08]

Odyssey Stevedoring of Puerto Rico, Inc. v. Puerto Rico Port Authority; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission ("Commission") by Odyssey Stevedoring of Puerto Rico, Inc. ("Complainant") against the Puerto Rico Port Authority ("PRPA").

Complainant contends that PRPA engaged in a number of activities in connection with negotiating and entering into maritime terminal leases and agreements, including preferential use, berthing and warehousing agreements, which violated sections 10(d)(1), 10(d)(2), and 10(d)(4) of the Shipping Act of 1984 and injured the Complainant.

Complainant asks that PRPA be compelled to answer its charges and that the Commission order PRPA to: Cease and desist from these violations; re-apportion certain terminal facilities located at the Port of San Juan between the remaining stevedoring and marine terminal companies, including Complainant; and take such further and other actions as to afford preferential usage, including berthing, warehousing and open spaces, as the Commission establishes as necessary to restore competition in regard to stevedoring and breakbulk services in the Port of San Juan. The Complainant also requests the Commission to award it damages in an amount reflecting Complainant's lost business and profits; the amounts which Complainant has paid pursuant to PRPA's tariff which exceed the amounts Complainant would have paid pursuant to certain PRPA preferential use and exclusive use agreements, and such other further relief as the Commission determines just and proper in the circumstances.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by June 3, 2003, and the final decision of the Commission shall be issued by October 1, 2003.

Bryant L. VanBrakle,
Secretary.

[FR Doc. 02-14411 Filed 6-7-02; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and

§ 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 25, 2002.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *John W. Sutherland, Jr.*, Andover, Kansas; to acquire voting shares of Ottawa Bancshares, Inc., Salina, Kansas, and thereby indirectly acquire voting shares of First Bank Kansas, Salina, Kansas; First Kansas Bank, Hoisington, Kansas; Kansas State Bank, Ottawa, Kansas and The Lyon County State Bank, Emporia, Kansas.

Board of Governors of the Federal Reserve System, June 4, 2002.

Robert deV. Frierson,
Deputy Secretary of the Board.

[FR Doc. 02-14396 Filed 6-7-02; 8:45 am]

BILLING CODE 6210-01-S

GENERAL SERVICES ADMINISTRATION

Office of Communications; Cancellation of Standard Forms

AGENCY: Office of Management Services, GSA.

ACTION: Notice.

SUMMARY: The General Services Administration (GSA), Office of Governmentwide Policy canceled the following forms:

SF 1109, U.S. Government Bill of Lading—Continuation Sheet (both constructions)

SF 1200, Government Bill of Lading Correction Notice

The Federal Management Regulation (41 CFR) 102-118 prescribing these forms was rewritten to delete their use.

DATES: Effective June 10, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Allison, General Services Administration, (202) 219-1729.

Dated: June 4, 2002.

Barbara M. Williams,
Deputy Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 02-14509 Filed 6-07-02; 8:45 am]

BILLING CODE 6820-BR-M

GENERAL SERVICES ADMINISTRATION

Office of Management Services; Transfer of Responsibility and Revision of an Optional Form by the U.S. Office of Personnel Management

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The U.S. Office of Personnel Management has transferred the ownership of the following Optional Form: OF 55, U.S. Government Identification.

The General Services Administration is responsible for government-wide regulations on security and building access; therefore, this form should be issued by them.

Also, the "If found * * *" address was updated on the reverse of the form.

This form is now authorized for local reproduction. Agencies may request a camera copy to use for printing from: Forms Management, (202) 501-0581, e-mail: barbm.williams@gsa.gov or the Internet: <http://w3.gsa.gov/web/c/newform.nsf/MainMenu?OpenForm>.

DATES: Effective June 10, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501-0581.

Dated: May 27, 2002.

Barbara M. Williams,
Deputy Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 02-14508 Filed 6-7-02; 8:45 am]

BILLING CODE 6820-BR-M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090-0252]

Submission for OMB Review and Public Comments; Comment Entitled Preparation, Submission, and Negotiation of Subcontracting Plans

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for an extension to an existing OMB clearance (3090-0252).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration, Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning the Preparation, Submission, and Negotiation of Subcontracting Plans. A request for public comments was published at 67 FR 11701, March 15, 2002. No comments were received. This information collection will ensure that small and small disadvantaged business concerns are afforded the maximum practicable opportunity to participate as subcontractors in construction, repair, and alteration or lease contracts. Preparation, Submission, and Negotiation of Subcontracting Plans requires all negotiated solicitations having an anticipated award value over \$500,000 (\$1,000,000 for construction), submission of a subcontracting plan with other than small business concerns when a negotiated acquisition meets all four of the following conditions:

When the contracting officer anticipates receiving individual subcontracting plans (not commercial plans);

When the award is based on trade-offs among cost or price and technical and/or management factors under FAR 15.101-1;

The acquisition is not a commercial item acquisition, and

The acquisition offers more than minimal subcontracting opportunities.

Public comments are particularly invited on: Whether the information collection generated by the GSAR Clause, Preparation, Submission, and Negotiation of Subcontracting Plans is necessary for small business/subcontracting plans; 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: *Comment Due Date:* July 10, 2002.

FOR FURTHER INFORMATION CONTACT: Rhonda Cundiff, Office of Acquisition Policy (202) 501-0044.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Jeanette Thornton, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Ms. Stephanie Morris, General Services Administration (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration is requesting that the Office of Management and Budget (OMB) renew information collection, 3090-0252, concerning the Preparation, Submission, and Negotiation of Subcontracting Plans. This provision requires a contractor (except other than small business concerns) to submit a subcontracting plan when a negotiated acquisition including construction, repair, and alternations and lease contracts (except those solicitations using simplified procedures) meets all four of the following conditions:

When the contracting officer anticipates receiving individual subcontracting plans (not commercial plans), when award is based on trade-offs among cost or price and technical and/or management factors under FAR 15.101-1, the acquisition is not a commercial item acquisition, and the acquisition offers more than minimal subcontracting opportunities.

B. Annual Reporting Burden

Respondents: 1,020.

Annual responses: 1.

Average hours per response: 12.

Burden hours: 12,240.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, Regulatory Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208-7312. Please cite OMB Control No. 3090-0252, Preparation, Submission, and Negotiation of Subcontracting Plans.

Dated: May 31, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02-14510 Filed 6-7-02; 8:45 am]

BILLING CODE 6820-BR-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Draft Report on Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by HHS Agencies

AGENCY: U.S. Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice announces an extension of the period for comment on the U.S. Department of Health and Human Services Draft Agency Guidelines for Ensuring the Quality of Information Disseminated to the Public until June 28, 2002. The HHS Draft Agency Guidelines have been developed pursuant to the government-wide OMB Guidelines for Information Quality published on January 3, 2002. HHS has received a number of requests to extend the comment period for the HHS draft guidelines, which are available at the following HHS website: <http://www.hhs.gov/infoquality>

DATES: Comments on the HHS draft agency guidelines must be submitted by 5:00 P.M., June 28, 2002. Please allow sufficient time for mailed comments to be received by the deadline in the event of delivery delays.

ADDRESSES: Please submit written comments to Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation, Attn: Information Quality Comments, U.S. Department of Health and Human Services, Room 440D, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Comments also may be e-mailed to Info.comments@hhs.gov.

FOR FURTHER INFORMATION CONTACT: James Scanlon, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation, U.S. DHHS, Telephone (202) 690-7100.

SUPPLEMENTARY INFORMATION: On January 3, 2002, OMB issued final guidelines to federal agencies that implement Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554). Section 515 directs OMB to issue government-wide guidelines that provide policy and procedural guidance to federal agencies for ensuring and maximizing the quality, objectivity, utility and integrity of information (including statistical information) disseminated by federal agencies. The OMB guidelines in turn direct each federal agency to issue its own guidelines for ensuring the quality,

objectivity, utility and integrity of the information it disseminates to the public, including administrative mechanisms allowing affected persons to seek and obtain, where appropriate, correction of information disseminated by the agency that does not comply with the guidelines.

The OMB Guidelines further direct federal agencies to prepare a draft report, no later than May 1, 2002, providing the agency's information quality guidelines and describing the administrative mechanisms developed by the agency to allow affected persons to seek and obtain appropriate correction of information. The agency also is directed to publish a notice of the availability of this draft report in the **Federal Register**, and post this report on the agency's website to provide an opportunity for public comment.

HHS Draft Agency Guidelines

In accordance with the requirements of the OMB Guidelines, the HHS draft report on agency guidelines is available for review and comment at the following HHS website: <http://www.hhs.gov/infoquality>

Comments Invited

Comments on the draft report are invited and must be submitted in writing to the office and email addresses specified in this notice. Because of staff and resource limitations, we cannot respond to individual comments.

Dated: May 31, 2002.

William Raub,

Deputy Assistant Secretary for Planning and Evaluation.

[FR Doc. 02-14442 Filed 6-7-02; 8:45 am]

BILLING CODE 4151-05-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement 02134]

Exposure to Tremolite Asbestos in Vermiculite Ore; Notice of Availability of Funds

A. Purpose

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program to conduct site-specific health activities for Exposure to Tremolite Asbestos in Vermiculite Ore. This program addresses the "Healthy People 2010" focus area of Environmental Health.

The purpose of the program is to conduct site-specific health activities related to human exposure to contaminated vermiculite ore at sites identified by the Environmental Protection Agency (EPA) as receiving and/or processing ore.

Measurable outcomes of the program will be in alignment with the following performance goals for ATSDR:

1. Evaluate human health risks from toxic sites and take action in a timely and responsive public health manner.
2. Ascertain the relationship between exposure to toxic substances and disease.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 104(i)(1)(E),(6), (7), (14) and (15) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 [42 U.S.C. 9604 (i)(1)(E),(6),(7),(14), and (15)]. The Catalog of Federal Domestic Assistance number is 93.161.

C. Eligible Applicants

Assistance will be provided only to the health departments of States or their bona fide agents or instrumentalities. State organizations, including State universities, must establish that they meet their respective State legislature's definition of a State entity or political subdivision to be considered an eligible applicant.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Availability of Funds

Approximately \$400,000 is available in FY 2002 to fund approximately one to four awards. It is expected that the awards will range from \$10,000 to \$400,000 (\$10,000 per site evaluated for the conduct of health statistics reviews, \$75,000 for mesothelioma surveillance, and a maximum of \$400,000 for epidemiologic investigations.) It is expected that the awards will begin on or about September 1, 2002, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies, and services. Funds for contractual services may be requested; however, the grantee, as the direct and primary recipient of PHS grant funds, must perform a substantive role in carrying out project activities and not merely serve as a conduit for an award to another party or provide funds to an ineligible party. Funds may not be used to purchase equipment.

Funding Preference

For the mesothelioma surveillance, preference will be given to states with at least 100 cases of mesothelioma per year and at least eight sites that received the asbestos contaminated ore.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for activities under 1. Recipient Activities, and ATSDR will be responsible for the activities listed under 2. ATSDR Activities.

1. Recipient Activities

a. Health Statistics Reviews. Analyze existing health outcome data of select asbestos-related diseases. Mortality data will be the most readily available data for asbestos-related diseases such as mesothelioma, lung cancer, and asbestosis, although cancer registry data should be utilized where available. Using disease rates by site, determine if there is any excess in disease that would require additional follow-up in Years two and three.

b. Epidemiologic Investigations. After demonstrating an increase of asbestos related disease at a specific site (e.g., through a health statistics review) develop a protocol, conduct the investigation and prepare a final report of the study. This protocol and report will undergo scientific peer review as required by ATSDR.

c. Mesothelioma Surveillance. Determine if a particular site which received Libby ore is contributing to the mesothelioma burden in the state. Develop a protocol, conduct the recommended investigation and prepare a final report of the project. This protocol and report will undergo scientific peer review as required by ATSDR.

d. Provide proof by citing a State code or regulation or other State pronouncement under authority of law, that medical information obtained pursuant to the agreement will be protected from disclosure when the consent of the individual to release identifying information is not obtained.

e. If a demonstrated excess of disease is found, develop a mechanism for ongoing interaction with, and education of the affected community.

2. ATSDR Activities

a. Health Statistics Review.

(1) Provide a standard protocol to use to analyze existing health outcome data of select asbestos-related diseases.

(2) Provide scientific and epidemiologic assistance.

b. Epidemiologic Investigations.

Provide consultation and assist in monitoring the data; participate in the study analysis and collaborate in interpreting the study findings.

c. Mesothelioma Surveillance.

(1) Provide a standard protocol and questionnaire to be used to trace, interview cases of mesothelioma, and analyze the risk of environmental exposure to asbestos contaminated vermiculite ore from Libby, MT, and link it to the cases of mesothelioma.

(2) Provide scientific and epidemiologic assistance.

d. Conduct technical and peer review.

F. Content

In a narrative form, the application should include a discussion of areas under the "Evaluation Criteria" section of this announcement as they relate to the proposed program. These criteria serve as the basis for evaluating the application, therefore, omissions or incomplete information may affect the rating of the application. This program does not require in-kind support or matching funds, however, the applicant should describe any in-kind support in the application.

The narrative should be no more than 30 pages, double-spaced, printed on one side, with one-inch margins, and un-reduced 12 point font on 8½ by 11 inch paper. The pages must be clearly numbered, and a complete index to the application and its appendices must be included. The original and two copies of the application must be submitted unstapled and unbound.

G. Submission and Deadline

Application

Submit the original and two copies of PHS 5161-1 (OMB Number 0937-0189). Forms are available at the following Internet address: www.cdc.gov/od/forminfo.htm.

On or before July 15, 2002, submit the application to: Technical Information Management—PA 02134, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341-4146.

Deadline: Applications shall be considered as meeting the deadline if they are received on or before the deadline date.

Late Applications: Applications which do not meet the criteria in above are considered late applications, will not be considered, and will be returned to the applicant.

H. Evaluation Criteria

The applicant is required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals as stated in section "A. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These Measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by ATSDR.

1. Proposed Program (50 percent)

The extent to which the application addresses (a) the approach, feasibility, adequacy, and rationale of the proposed project design; (b) the technical merit of the proposed project, including the degree to which the project can be expected to yield results that meet the program objective, and the technical merit of the methods and procedures (including quality assurance and quality control procedures) for the proposed project; (c) the proposed project timeline, including clearly established project objectives towards which progress can and will be measured; (d) the proposed community involvement strategy; (e) the proposed method to disseminate the results to State and local public health officials, community residents, and other concerned individuals and organizations; and (f) the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. Program Personnel (30 percent)

The extent to which the application has described (a) the qualifications, experience, and commitment of the principal investigator (or project director) and his/her ability to devote adequate time and effort to provide

effective leadership; and (b) the competence of associates to accomplish the proposed activity, their commitment, and the time they will devote.

3. Applicant Capability and Coordination Efforts (20 percent)

The extent to which the application has described (a) the capability of the applicant's administrative structure to foster successful scientific and administrative management of a study; (b) the capability of the applicant to demonstrate an appropriate plan for interaction with the community; (c) the suitability of facilities and (d) equipment available or to be purchased for the project.

4. Program Budget (not scored)

The extent to which the budget is reasonable, clearly justified, and consistent with intended use of cooperative agreement/grant funds.

5. Human Subjects (not scored)

The extent to which the application adequately addresses the requirements of Title 45 CFR Part 46 for the protection of human subjects.

I. Other Requirements

Technical Reporting Requirements

Provide CDC and ATSDR with original plus two copies of:

1. Semi-annual progress reports. The progress report will include:

a. A brief program description.

b. A listing of program goals and objectives accompanied by a comparison of the actual accomplishments related to the goals and objectives established for the period.

c. If established goals and objectives to be accomplished were delayed, describe both the reason for the deviation and anticipated corrective action or deletion of the activity from the project.

d. Other pertinent information, including the status of the program.

e. Measures of effectiveness data requirement.

f. Financial recap of obligated dollars to date as a percentage of total available funds.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment III in the application kit.

- AR-1 Human Subjects Requirements
- AR-2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR-7 Executive Order 12372 Review
- AR-9 Paperwork Reduction Act Requirements
- AR-10 Smoke-Free Workplace Requirements
- AR-11 Healthy People 2010
- AR-12 Lobbying Restrictions
- AR-17 Peer and Technical Reviews of Final Reports of Health Studies—ATSDR
- AR-18 Cost Recovery—ATSDR
- AR-19 Third Party Agreements—ATSDR

J. Where To Obtain Additional Information

A complete copy of the announcement may be downloaded from CDC's home page at: <http://www.cdc.gov> Click on "Funding" then "Grants and Cooperative Agreements."

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Edna Green, Grants Management Specialist, Acquisition and Assistance Branch B, Procurement and Grants Office, Centers for Disease Control and Prevention, Announcement 02134, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341-4146, Telephone number (770) 488-2743, E-mail address: ecg4@cdc.gov.

For program technical assistance, contact: Kevin Horton, Epidemiologist, Division of Health Studies, Agency for Toxic

Substances and Disease Registry, Executive Park, Building 4, Suite 2300, MS E-31, Atlanta, GA 30305, Telephone: (404) 498-0571, E-mail Address: Dhorton@CDC.GOV.

or
Maggie Warren, Public Health Advisor, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Rd., NE., MS E-31, Atlanta, GA 30333, Telephone (404) 498-0546, E-mail Address: mcs9@cdc.gov.

Dated: June 3, 2002.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02-14452 Filed 6-7-02; 8:45 am]

BILLING CODE 4163-70-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02073]

Traumatic Brain Injury (TBI) Follow-up Registry And Surveillance of TBI in the Emergency Department (ED); Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 2002 funds to fund grants for Traumatic Brain Injury Follow-up Registry And Surveillance Of TBI In The Emergency Department was published in the **Federal Register** on May 8 2002, Vol. 67, No. 89, pages 30939-30942. The notice is amended as follows:

On page 30939, first column, Section C. Availability of Funds, Paragraph 1, line 1, should be changed to read
 “* * * Approximately \$715,000

(including direct and indirect cost)
 * * *”

Dated: June 4, 2002.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02-14451 Filed 6-7-02; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Form OCSE-396A: Financial Report; Form OCSE-34A: Quarterly Report of Collections.

OMB No.: 0970-0181.

Description: Each State agency administering the Child Support Enforcement Program under Title IV-D of the Social Security Act is required to provide information to the Office of Child Support Enforcement concerning its administrative expenditures and its receipt and disposition of child support payments from non-custodial parents. These quarterly reporting forms enable each State to provide that information, which is used to compute both the quarterly grants awarded to each State and the annual incentive payments earned by each State. This information is also included in a published annual statistical and financial report, available to the general public.

Respondents: State agencies administering the Child Support Enforcement Program.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Average burden hours
OCSE-396A	54	4	8	1,728
OCSE-34A	54	4	8	1,728
Estimated Total Annual Burden Hours:				3,456

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing

to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on

respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: June 4, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02-14464 Filed 6-7-02; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N-0062]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Premarket Notification for a New Dietary Ingredient

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by July 10, 2002.

ADDRESSES: Submit written comments on the collection of information to the

Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Premarket Notification for a New Dietary Ingredient—21 CFR 190.6 (OMB Control Number 0910-0330)—Extension

Section 413(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350b(a)) provides that a manufacturer or distributor of dietary supplements or of a new dietary ingredient is to submit information to FDA (as delegate for the Secretary of Health and Human Services) upon which it has based its conclusion that a dietary supplement containing a new dietary ingredient will reasonably be expected to be safe at least 75 days before the introduction or delivery for introduction into interstate commerce of a dietary supplement that contains a new dietary ingredient. FDA's regulations at part 190, subpart B (21 CFR part 190, subpart B) implement these statutory provisions. Section 190.6(a) requires each manufacturer or distributor of a dietary supplement

containing a new dietary ingredient, or of a new dietary ingredient, to submit to the Office of Nutritional Products, Labeling, and Dietary Supplements notification of the basis for their conclusion that said supplement or ingredient will reasonably be expected to be safe. Section 190.6(b) requires that the notification include: (1) The complete name and address of the manufacturer or distributor, (2) the name of the new dietary ingredient, (3) a description of the dietary supplements that contain the new dietary ingredient, and (4) the history of use or other evidence of safety establishing that the dietary ingredient will reasonably be expected to be safe.

The notification requirements described previously are designed to enable FDA to monitor the introduction into the food supply of new dietary ingredients and dietary supplements that contain new dietary ingredients, in order to protect consumers from unsafe dietary supplements. FDA uses the information collected under these regulations to help ensure that a manufacturer or distributor of a dietary supplement containing a new dietary ingredient is in full compliance with the act.

In the **Federal Register** of March 19, 2002 (67 FR 12570), the agency requested comments on the proposed collection of information. One comment was received, but it did not pertain to the information collection.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
190.6	35	1	35	20	700

¹There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA believes that there will be minimal burden on the industry to generate data to meet the requirements of the premarket notification program because FDA is requesting only that information that the manufacturer or distributor should already have developed to satisfy itself that a dietary supplement containing a new dietary ingredient is in full compliance with the act. However, the agency estimates that extracting and summarizing the relevant information from the company's files, and presenting it in a format that will meet the requirements of section 413 of the act will require a burden of

approximately 20 hours of work per submission.

This estimate is based on the annual average number of premarket notifications FDA received during the last 3 years (i.e., 1999-2001), which was 23. Twenty-three represents 12 more notifications than the agency received as an annual average during the previous 3-year period (i.e., 1996-1998). Therefore, FDA anticipates a similar upward trend will be seen in the annual average number of notifications it receives during 2002-2004, which is estimated to be 35 (23 + 12 = 35).

Dated: May 31, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02-14456 Filed 6-7-02; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Ethical Issues Associated With Nurse Practitioner and Physician Assistant Practice: A Comparative Analysis

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Department of Clinical Bioethics, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collected listed below. This proposed information collection was previously published in the **Federal Register** on January 22, 2002, page 2892 and allowed 60 days for public comment. Public comments were received. The purpose of this notice is to allow an additional 30 days for public

comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Ethical Issues Associated with Nurse Practitioner and Physician Assistant Practice: A Comparative Analysis. Type of Information Collection Request: New. Need and Use of Information Collected: The purposes of the study are (1) to examine whether the current practice environment has created ethical concerns/conflict for Nurse Practitioners and Physician Assistants in the provision of patient care; (2) to explore relationships between selected individual, organizational, and state regulatory factors and ethical conflict in practice

and the perceived delivery of quality care; and (3) to examine the perceived level of ethics preparedness and confidence in ethics decision-making. The findings will provide valuable information concerning: (1) The importance of ethics and ethical factors from the perspective of different professional groups, and (2) ethics educational needs of Nurse Practitioners and Physician Assistants. Frequency of Response: Once. Affected Public: Individuals; Academic Institutions, Business or for-profit; Not-for-profit organizations. Type of Respondents: Nurse Practitioners and Physician Assistants. The annual reporting burden follows in the table below. The annualized cost to respondents is estimated at: \$97,500. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Respondent and Burden Estimate Information

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Nurse Practitioners	1950	1	.33	643.5
Physician Assistants	1950	1	.33	643.5
Total				1287

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used, (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget,

Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Connie Ulrich, RN, PhD., Principal Investigator, Department of Clinical Bioethics, Warren G. Magnuson Clinical Center, Building 10, Room 1C118, Bethesda, MD 20892, or call non-toll-free number (301) 451-8338 or E-mail your request, including your address to *culrich@cc.nih.gov*.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: June 3, 2002.

David K. Henderson,
Deputy Director, Warren G. Magnuson Clinical Center, National Institutes of Health.
Ezekiel J. Emanuel,
Director, Department of Clinical Bioethics, Warren G. Magnuson Clinical Center, National Institutes of Health.

[FR Doc. 02-14438 Filed 6-7-02; 8:45 am]

BILLING CODE 4141-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: "High Throughput Infrared Spectroscopy"

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is a public notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the

inventions embodied in: U.S. Patent Application Nos. 60/092,769 filed July 14, 1998; 60/095,800 filed August 7, 1998; 09/353,325 filed July 14, 1999 and PCT Application No. PCT/US99/15900 filed July 14, 1999 ("High Throughput Infrared Spectroscopy" by Neil Lewis); U.S. Patent Application Nos. 60/120,859 filed February 19, 1999; 60/143,801 filed July 14, 1999; 09/507,293 filed February 18, 2000 and PCT Application No. PCT/US00/19271 filed July 14, 2000 ("High Volume On Line Spectroscopic Composition Testing of Manufactured Pharmaceutical Dosage Units" by Neil Lewis, David Strachan and Linda Kidder), to Spectral Dimensions, Inc., having a place of business in Olney, Maryland.

The United States of America is an assignee to the patent rights of these inventions. The field of use for the contemplated exclusive license may be limited to instrumentation for inspection of finished pharmaceuticals and drug candidate screening.

DATES: Only written comments and/or applications for a license that are received by the NIH Office of Technology Transfer on or before September 9, 2002, will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Dale D. Berkley, Ph.D., J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852-3804; Telephone: (301) 496-7735, ext. 223; Facsimile: (301) 402-0220; e-mail: berkleyd@od.nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent application.

SUPPLEMENTARY INFORMATION: The invention is an infrared spectrometer having an array of cells with a number of cavities. A number of the cells typically contain a different reference material, and a plurality of cells are reserved to hold various samples. The cells have covers and can be individually purged before a measurement is made. Because reference and unknown samples can be processed at the same time, variation between measurements can be minimized. Using two connected cells, an instrument can monitor a reaction in real time, continuously determining relative concentrations of reagents, products and intermediates. The cells may form parts of process feed lines, such that multiple processes can be monitored in real time. The invention further comprises a pharmaceutical

dosage unit manufacturing process control system that uses continuous spectral imaging to test the actual composition of pharmaceutical dosages even in packaged drugs. The system can screen for errors in coloring of ingredients, for contamination or breakdown that occurs independent of coloring and for other types of errors that might not otherwise be detected. The system can perform composition measurements through the end-user package walls to detect contamination or damage that occurs during packaging. The invention performs composition analysis by comparing spectral information with libraries of known spectral signatures, allowing small concentrations of potentially dangerous contaminants to be detected. Relative quantities of ingredients can be directly measured, such that a change in the ratio of these ingredients can be detected.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 90 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: May 29, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 02-14440 Filed 6-7-02; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: "Compound, Composition and Method For Treating Cancer", U.S. Patent 6,235,761

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. § 209(c)(1) and 37 CFR

part 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in United States Patent number 6,235,761, entitled, "Compound, composition and method for treating cancer," which was issued on May 22, 2001 and claims priority to U.S. Patent Application S/N 60/019,086, entitled, "Compound, composition and method for treating cancer," which was filed on May 30, 1996, to Xanthus Life Sciences which is located in Cambridge, Massachusetts. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be worldwide and the field of use may be limited to human therapeutics for the treatment of cancer.

DATES: Only written comments and/or license applications that are received by the National Institutes of Health on or before August 9, 2002 will be considered.

ADDRESSES: Requests for copies of the patent, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Richard U. Rodriguez, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD. 20852-3804. Telephone: (301) 496-7056, X287; Facsimile: (301) 402-0220; and E-mail: rodrigur@od.nih.gov.

SUPPLEMENTARY INFORMATION: The technology claimed in the issued patent relates to the 4-demethyl penclomedine molecule and all salts, both alone and in combination. The patent also claims use of the drug in treating cancer, especially solid tumors.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR Part 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: May 28, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 02-14439 Filed 6-7-02; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Refugee Resettlement

[CFDA Number 93.576]

Discretionary Funds for Projects To Establish Individual Development Account Programs for Refugees

AGENCY: Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

ACTION: Notice of availability of FY 2002 discretionary social service funds to public and private, non-profit agencies for projects to establish and manage Individual Development Account (IDA) programs for refugees.

SUMMARY: The Office of Refugee Resettlement invites eligible entities to submit competitive grant applications for projects to establish and manage Individual Development Accounts (IDAs) for low-income refugee¹ participants. Eligible refugee participants who enroll in these projects will open and contribute systematically to IDAs for specified Savings Goals, including home ownership, business capitalization, and postsecondary education. Grantees may use ORR funds to provide matches for the savings in the IDAs up to \$2,000 per individual refugee and \$4,000 per refugee household. Applications will be screened and evaluated as indicated in this program announcement. Awards will be contingent on the outcome of the competition and the availability of funds.

DATES: The closing date for submission of applications is July 10, 2002. See Part

¹ Eligibility for refugee social services includes: (1) Refugees; (2) asylees; (3) Cuban and Haitian entrants under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422); (4) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, as included in the FY 1988 Continuing Resolution (Pub. L. 100-202); (5) certain Amerasians from Vietnam, including U.S. citizens, under Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1989 (Pub. L. 100-461), 1990 (Pub. L. 101-167), and 1991 (Pub. L. 101-513); and (6) victims of a severe form of trafficking (see 45 CFR 400.43 and ORR State Letter on trafficking victims). For convenience, the term "refugee" is used in this notice to encompass all such eligible persons.

IV of this announcement for more information on submitting applications.

ADDRESSES: Announcement Availability: The program announcement and the application materials are available on the ORR website at www.acf.dhhs.gov/programs/orr.

FOR FURTHER INFORMATION CONTACT: Henley Portner, Program Specialist, Division of Community Resettlement (DCR), ORR, Administration for Children and Families (ACF), (202) 401-5363; Fax: (202) 401-0981; E-mail: HPortner@ACF.HHS.GOV.

SUPPLEMENTARY INFORMATION: This program announcement consists of four parts:

- Part I: Background—program purpose, program objectives, legislative authority, funding availability, definition of terms
- Part II: Project and Applicant Eligibility—funding priorities, preferences, eligible applicants, project and budget periods, multiple applications, treatment of program income
- Part III: The Review Process—intergovernmental review, initial ACF screening, evaluation criteria and competitive review
- Part IV: The Application—application materials, application development, application submission

Paperwork Reduction Act of 1995 (Public Law 104-13): Public reporting burden for this collection of information is estimated to average four hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. The following information collection is included in the program announcement: OMB Approval No. 0970-0139, ACF UNIFORM PROJECT DESCRIPTION (UPD), which expires 12/31/2003. 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.

Part I. Background

Program Purpose and Objectives: The Office of Refugee Resettlement invites qualified entities to submit competing grant applications for new projects that will establish, support, and manage Individual Development Accounts (IDAs) for eligible low-income refugee individuals and families. The Refugee IDA Program represents an anti-poverty strategy built on asset accumulation for low-income refugee individuals and families with the goal of promoting refugee economic independence. In particular, the objectives of this program

are to: Increase the ability of low-income refugees to save; promote their participation in the financial institutions of this country; assist refugees in advancing their education; Increase home ownership; and assist refugees in gaining access to capital. These new projects will accomplish these objectives by establishing programs that combine the provision of matched savings accounts with financial training and counseling.

Eligibility for this program is limited to refugees:

- Who have earned income and whose household earned income at time of enrollment does not exceed 200 percent of the federal poverty level; and
- Whose assets at time of enrollment do not exceed \$10,000, excluding the value of a primary residence.

A copy of the HHS Poverty Guidelines is attached to this announcement. The Poverty Guidelines may also be found at <http://aspe.hhs.gov/poverty/02poverty.htm>.

Grantees, in partnership with qualified financial institutions, will create Individual Development Accounts for refugee participants. Refugee participants will systematically contribute to the IDAs out of earned income to purchase specified Savings Goals. Grantees may include any or all of the following Savings Goals in their IDA program:

- Home Purchase or Renovation;
- Postsecondary Education, Vocational Training, or Recertification;
- Microenterprise Capitalization;
- Purchase of an Automobile;
- Purchase of a Computer.

Additional information on these Savings Goals is provided in the Definition of Terms section of this announcement.

ORR encourages applicants to include in their applications a plan for developing commitments of additional public or private funds for matching IDA deposits, operational overhead, or training. If additional funds have been secured, documentation should be provided in the application in writing, executed with the entity providing the non-ORR contribution, on letterhead of the entity, and signed by a person authorized to make a commitment on behalf of the entity.

The grantee will establish a "Savings Plan Agreement" with each refugee participant. The Savings Plan Agreement should include:

- (1) A proposed schedule of savings deposits by the participant;
- (2) The rate at which the participant's savings will be matched;
- (3) The Savings Goal(s) for which the account is maintained;

(4) Any training or counseling which the participant agrees to attend;

(5) Agreement that the participant will not withdraw funds except for the specified Savings Goal or for an emergency and only after notification to the grantee; and

(6) Statement by the participant that the participant is not participating, and has not participated, in any other ORR-funded IDA program;

(7) A procedure for amending the Agreement.

Applicants under this grant announcement may propose additional provisions to be included in Savings Plan Agreements.

The IDA contains only the refugee participant's deposits and interest earned on those deposits. The grantee will create a parallel account (or parallel accounts), separate from the participants' IDAs, in a qualified financial institution, in which all matching ORR grant funds will be deposited and maintained on behalf of the refugee participants. Drawdown of the ORR grant funds and deposit of those funds into the parallel account(s) will be permitted no earlier than the time of the refugee's deposit to the IDA. Grantees must draw down ORR funds for matching IDA deposits within three months of the date that the refugee participant makes the deposit.

ORR funds may be used at a matching rate no greater than one-to-one for each dollar deposited in the IDA by the refugee participant. Grantees may choose to vary the amount of the match by type of Savings Goal and/or by income level of the refugee participants. Over the course of the three-year project period, not more than \$2,000 in ORR grant funds may be provided through matching contributions to any one refugee individual and not more than \$4,000 may be provided to any one refugee household. When the refugee purchases the Savings Goal, the grantee must use vendor payments for the matching funds.

The interest that accrues on the ORR matching funds deposited in the parallel account must be credited to the IDAs of the refugee participants. The interest that is credited to the refugee participants is not subject to the \$2,000/\$4,000 limits. The interest on the match funds in the parallel account may not be retained by the grantee for any purpose, including program administration, participant support services, or program data collection.

ORR strongly encourages applicants to incorporate in these projects financial training for the refugee participants. The training may be provided directly by the

grantee or the grantee may choose to provide the training through subgrantees or other providers. The training provided by a grantee should reflect both the refugee population and the Savings Goals to be included in the program. Such training could include budgeting, cash management, savings, investment, and credit counseling. Specialized training and technical assistance should be provided for refugee participants for each Savings Goal provided through the program.

Under these projects, grantees should schedule their account activities so that all IDA accounts reach their maximum savings, and refugee participants have purchased their Savings Goal, within the three-year project period.

Legislative Authority: Section 412(c)(1)(A) of the Immigration and Nationality Act authorizes the Director "to make grants to, and enter into contracts with, public or private nonprofit agencies for projects specifically designed—(i) To assist refugees in obtaining skills which are necessary for economic self-sufficiency, including projects for job training, employment services, day care, professional refresher training, and other recertification services; (ii) to provide training in English where necessary (regardless of whether the refugees are employed or receiving cash or other assistance); and (iii) to provide where specific needs have been shown and recognized by the Director, health (including mental health) services, social services, educational and other services."

Funding Availability: ORR expects to award approximately \$2.5 million in FY 2002 funds for the Refugee IDA Program among approximately six to twelve grantees. Grants are expected to range from \$200,000 to \$400,000.

Approximately 75–80 percent of the ORR grant funds should be designated for the purpose of providing matches for the refugee IDA accounts. The remaining 20–25 percent of ORR funds may be used for the administrative and operational costs of the project and for financial training, counseling, and technical assistance.

The Director reserves the right to award more or less than the funds described in the absence of worthy applications or such other circumstances as may be deemed to be in the best interest of the government. Applicants may be required to reduce the scope of selected projects based on the amount of the approved grant award.

Definition of Terms: Individual Development Accounts (IDAs) are leveraged, or matched, savings accounts.

IDAs are established in insured accounts in qualified financial institutions. The funds are intended for the Savings Goals specified in this announcement. Although the refugee participant maintains control of all funds that the participant deposits in the IDA, including all interest that may accrue on the funds, the participant must sign a Savings Plan Agreement with the grantee that specifies that the funds in the account will be used only for the participant's Savings Goal or for an emergency withdrawal. A signed Savings Plan Agreement is required for the refugee participant to be eligible for matching funds.

The **Savings Goals**, as specified below, are the purchases/investments for which the matching funds, and the interest on matching funds, are available when used in conjunction with the savings from the IDAs of refugee participants. The Savings Goal specified by a participant in the Savings Plan Agreement may be for the benefit of the refugee participant or of a refugee dependent of the refugee participant. Savings Goals are defined as follows:

- **Home Ownership:** includes costs of a principal residence including the down payment and closing costs when purchasing a home; also renovation costs of a newly purchased home or of an existing primary residence. In the case of acquisition, the purchaser must be a first-time home buyer.

- **Microenterprise Capitalization:** means costs for a start-up micro-business described in a qualified business plan, such as capital, plant, equipment, working capital, and inventory expenses. The business plan must be approved by a financial institution, a microenterprise development organization, or a non-profit loan fund. The plan must also describe services or goods to be sold and include a marketing plan and projected financial statements.

- **Postsecondary Education, Vocational Training, and Recertification:** Tuition or fees, professional recertification fees, books, supplies, and equipment related to the enrollment or attendance of a refugee student at an educational institution.

- **Purchase of an Automobile:** if necessary for the purpose of maintaining or upgrading employment or for the purpose of transportation for postsecondary education, vocational training, or recertification.

- **Purchase of a Computer:** including hardware and software, to support a refugee student's enrollment in an educational, vocational, or recertification institution or for a microenterprise.

Qualified financial institution means a Federally insured bank or credit union or a State-insured bank or credit union if no Federally insured bank or credit union is available.

A **parallel account** is an insured account (or accounts) opened by the grantee in a qualified financial institution for the purpose of depositing the matching funds for the savings deposited by refugee participants in their individual IDAs. Interest earned on the matching funds must remain in the parallel account and be credited to the refugee participants. Both the matching funds and the interest earned on those funds must be made available to the refugee participant at the time that the participant purchases the Savings Goal. The matching funds and the interest on the matching funds in the parallel account are not available to the refugee participant except for the Savings Goals defined in this announcement.

An **emergency withdrawal** is a withdrawal of funds, or a portion of funds, deposited by the refugee participant in his/her Individual Development Account. The withdrawal may also include any of the interest that may have accrued to the participant's savings in the account. The participant must notify the project grantee of the withdrawal prior to the withdrawal. Causes for emergency withdrawals include, but are not limited to, medical expenses, payments to prevent eviction or foreclosure, or payments for necessary living expenses. If funds withdrawn for emergency purposes are not repaid within 12 months, the refugee participant forfeits the match on those funds. Emergency withdrawals may never be authorized from the parallel account(s).

Part II. Project and Applicant Eligibility

Eligible Applicants: To be eligible for funding under this announcement, projects must meet the following requirements. Eligible applicants for these funds include public and private, non-profit organizations. Faith-based organizations are eligible to apply for these grants.

Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations, or by providing a copy of the currently valid IRS tax-exempt certificate, or by providing a copy of the articles of incorporation bearing the seal of the

State in which the corporation or association is domiciled.

Applicants may request funding to administer a refugee IDA project directly with refugee participants or to act as an intermediary agency which will administer multiple projects through participating community-based organizations.

Applicants must also provide documentation of participation of a qualified financial institution(s) in the project. This documentation must be in writing, on letterhead of the financial institution, and signed by a person authorized to make the commitment on behalf of the financial institution. The documentation must include a commitment by the financial institution to establish IDAs for the refugee participants, to establish a parallel account (or accounts) for the matching funds, and to provide the grantee with account activity data on the IDAs and the parallel account(s) in a timely manner.

Project and Budget Periods: This announcement invites applications for project periods of up to three years. Awards, on a competitive basis, will be for a one-year budget period. Applications for continuation grants funded under these awards beyond the first 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.

Part III: The Review Process

A. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

The following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions need take no action in regard to E.O. 12372: Alabama, Alaska, American Samoa, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee,

Vermont, Virginia, Washington, and Wyoming.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility criteria of the program may still apply for a grant even if a State, Territory, Commonwealth, etc., does not have a Single Point of Contact (SPOC). All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations, which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Attention: Daphne Weeden, Grants Officer, 370 L'Enfant Promenade, SW., Fourth Floor West, Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included with the application materials for this program announcement.

B. Initial ACF Screening

Each application submitted under this program announcement will undergo a pre-review to determine that (1) the application was received by the closing date and submitted in accordance with the instructions in this announcement; and (2) the applicant is eligible for funding.

C. Competitive Review and Evaluation Criteria—Listed According to UPD Order

Applications that pass the initial ACF screening will be evaluated and rated by an independent review panel on the

basis of specific evaluation criteria. The evaluation criteria were designed to assess the quality of a proposed project and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications that are responsive to the evaluation criteria within the context of this program announcement. Proposed projects will be reviewed using the following evaluation criteria:

1. Objectives and Need for Assistance. The application identifies the refugee population to be assisted by this project and describes the need for assistance of this population. Indicators of the need for assistance include low rates of home ownership, education, access to capital, and use of financial institutions and high rates of reliance on public assistance and of incomes below 200 percent of the Federal poverty level. (15 points)

2. Approach. The application provides a clear explanation of a feasible, appropriate, and complete plan for establishing and managing IDAs for the refugee participants and, to the extent possible, for leveraging additional non-Federal financial matching resources. The plan clearly describes the structure, uses, requirements, and management of the IDAs and includes procedures for managing the parallel account(s), ensuring that interest on the matches is credited to refugee participants, and providing financial training appropriate to the refugee population and to the Savings Goals included in the project. (25 points)

3. Organizational Profiles. Applicant organization and staff and partner organizations have demonstrated capability to implement and manage new programs and to recruit and work with the refugee population. The applicant has developed a partnership with a financial institution(s) to implement the IDAs. (25 points)

4. Results or Benefits Expected. The outcomes and benefits proposed are reasonable and reflect the objectives of this announcement. The methodology proposed for collecting outcome data is reasonable. (20 points)

5. Budget and Budget Justification. The budget is reasonable and clearly justified. The methodologies for estimating the number of refugee participants and amount of matching funds are reasonable. (15 points)

Part IV. The Application

A. Application Development

In order to be considered for a grant under this program announcement, an application must be submitted on the Standard Form 424 and in the manner prescribed by ACF. Application materials including forms and instructions are available from the contact named under the **FOR FURTHER INFORMATION, CONTACT** section in the preamble of this announcement.

General Guidelines for Preparing a Project Description

Part I—The Project Description Overview

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

General Instructions

ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant-funded activity should be placed in an appendix. Please do not include books or videotapes as they are not easily reproduced and are, therefore, inaccessible to reviewers.

Pages should be numbered and a table of contents should be included for easy reference.

Part II—Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified

evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived. For example, ORR is particularly interested in the projected outcomes for the refugee participants, including the number of IDAs established, the amount of savings by refugee participants, the number and size of withdrawals for each of the Savings Goals, and the impact of the purchase of the Savings Goal on the refugee participant's movement toward self-sufficiency.

Approach

Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for

each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF."

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Geographic Location

Describe the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

Additional Information

Following are requests for additional information that need to be included in the application:

Staff and Position Data

Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports, or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses, and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate or by providing a copy of the articles of incorporation bearing the seal of the

State in which the corporation or association is domiciled.

Third-Party Agreements

Include written agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Letters of Support

Provide statements from community, public and commercial leaders that support the project proposed for funding. All submissions should be included in the application OR by application deadline.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF-424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, "Federal resources" refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time

equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Description: "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) \$5,000. (**Note:** Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information that supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those that belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000). Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions, professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description, and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should

immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Program Income

Description: The estimated amount of income, if any, expected to be generated from this project.

Justification: Describe the nature, source, and anticipated use of program income in the budget or refer to the pages in the application that contain this information.

Nonfederal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF-424.

Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

Total Direct Charges, Total Indirect Charges, Total Project Costs

Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, Assurances: Non-Construction Programs. Applicants must sign and return the Standard Form 424B with their applications. Applicants must provide a certification regarding lobbying when applying for an award in excess of \$100,000. Applicants must sign and return the certification with their applications. Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of \$100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying. Applicants must sign and

return the disclosure form, if applicable, with their applications.

Applicants must make the appropriate certification of their compliance with the Drug Free Workplace Act of 1988. By signing and submitting the application, the applicant is providing certification and need not mail back the certification with the application. Applicants must make the appropriate certification that they are not presently debarred, suspended, or otherwise ineligible for an award. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the application.

B. Application Submission

1. Mailed applications postmarked after the closing date will be classified as late.

2. Deadline. Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Attention: Daphne Weeden, Grants Officer, 370 L'Enfant Promenade, SW., Washington, DC 20447. Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.) Applications hand carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, ACF Mailroom, Second Floor (near loading dock), Aerospace Center, 901 D Street, SW., Washington, DC 20024, between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with

the note "Attention: Daphne Weeden, Grants Officer." ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

3. Late applications. Applications that do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

4. Extension of deadlines. ACF may extend an application deadline when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there is widespread disruption of the mail service, or in other rare cases. Determinations to extend or waive deadline requirements rest with ACF's Chief Grants Management Officer.

Program Income

Program income from activities funded under this program may be retained by the recipient and added to the funds committed to the project and used to further program objectives.

Applicable Regulations

Applicable U.S. Department of Health and Human Services regulations can be found in 45 CFR Part 74 or 92.

Reporting Requirements

Grantees under this program announcement will be required to provide quarterly program narrative reports, describing outcomes and activities under the grant. Grantees will also be required to submit semi-annual financial reports using the Financial Status Report (SF-269). A final financial and narrative report shall be due 90 days after the end of the project period (*i.e.*, after the final budget period).

Dated: May 24, 2002.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

[FR Doc. 02-14465 Filed 6-7-02; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services; Notice of Meeting Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Center for Mental Health Services (CMHS) National Advisory Council in June 2002.

A portion of the meeting will be open and will include a roll call, general announcements, and discussion about consumer affairs and prevention and early intervention activities.

Public comments are welcome. Please communicate with the individual listed below as contact for guidance. If anyone needs special accommodations for persons with disabilities please notify the contact listed below.

The meeting will also include the review, discussion, and evaluation of grant applications. Therefore a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2. & 10 (d).

A summary of the meeting and a roster of Council members may be obtained from Ms. Eileen Pensinger, Executive Secretary, CMHS, Room 15-99, Parklawn Building, Rockville, Maryland 20857, telephone (301) 443-4823.

Committee Name: Center for Mental Health Services National Advisory Council.

Meeting Date: June 20-21, 2002.

Place: The Gaithersburg Marriott Washingtonian Center (at Rio), 9751 Washingtonian Boulevard, Gaithersburg, Maryland.

Type:

Open: June 20, 2002, 2:30 p.m.-5 p.m.

Closed: June 21, 2002, 8 a.m.-10:45 a.m.

Open: June 21, 2002, 10:45 a.m.-12:30 p.m.

Contact: Eileen S. Pensinger, M.Ed., Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 15-99, Rockville, Maryland 20857, Telephone: (301) 443-4823 and FAX (301) 443-5163.

Dated: June 4, 2002.

Toian Vaughn,

Executive Secretary/Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02-14460 Filed 6-7-02; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of a Meeting

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Substance Abuse and Mental Health Services Administration (SAMHSA) National Advisory Council in June 2002.

The SAMHSA National Advisory Council meeting will be open and will include a panel presentation on workforce issues, a presentation on the President's New Freedom Commission on Mental Health, and an update on

SAMHSA's Strategic Plan. The agenda will also include small group sessions on SAMHSA's programs priorities: co-occurring disorders and trauma, substance abuse treatment capacity, seclusion and restraint, prevention and early intervention, children and families, New Freedom Initiative, terrorism/bio-terrorism, homelessness, aging, HIV/AIDS and Hepatitis C, and criminal justice.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the meeting, and a roster of Council members may be obtained from the contact whose name and telephone number is listed below.

Committee Name: SAMHSA National Advisory Council.

Date/Time: Thursday, June 20, 2002, 2:30 p.m. to 5:30 p.m. (Open).

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878.

Contact: Toian Vaughn, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 12C-15, Rockville, MD 20857, Telephone: (301) 443-7016; FAX: (301) 443-7590 and E-mail: tvaughn@samhsa.gov.

Dated: June 4, 2002.

Toian Vaughn,

Committee Management Officer, SAMHSA.

[FR Doc. 02-14459 Filed 6-7-02; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Nye County Habitat Conservation Plan for Lands Conveyed at Lathrop Wells, NV

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability

SUMMARY: Nye County, Nevada (Applicant) has applied to the Fish and Wildlife Service (Service) for an Incidental Take Permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The proposed permit would authorize take of the federally threatened desert tortoise (*Gopherus agassizii*) incidental to otherwise lawful activities associated with the development of 100 acres

(project site) near the community of Lathrop Wells, Nye County, Nevada.

We request comments from the public on the permit application, which is available for review. The application includes a Low-Effect Habitat Conservation Plan (HCP), that fully describes the proposed project and the measures that the Applicant would undertake to minimize and mitigate anticipated take of the desert tortoise, as required in Section 10(a)(2)(B) of the Act.

We also request comments on our preliminary determination that the HCP qualifies as a "low-effect" plan, eligible for a categorical exclusion under the National Environmental Policy Act. The basis for this determination is discussed in an Environmental Action Statement, which is also available for public review.

DATES: Written comments must be received no later than July 10, 2002.

ADDRESSES: Written comments should be addressed to Cynthia Martinez, Assistant Field Supervisor, Southern Nevada Field Office, 4701 North Torrey Pines Drive, Las Vegas, Nevada 89130. Comments may also be sent by facsimile to (702) 515-5231.

FOR FURTHER INFORMATION CONTACT: Michael Burroughs, Wildlife Biologist, at the address above, or by calling (702) 515-5230.

SUPPLEMENTARY INFORMATION:

Document Availability

Please contact the above office if you would like copies of the application, Habitat Conservation Plan (HCP), and Environmental Action Statement. Documents also will be available for review by appointment, during normal business hours at the above address.

Background

Section 9 of the Act and Federal regulation prohibit the "take" of fish or wildlife species listed as endangered or threatened, respectively. Take of listed fish or wildlife is defined under the Act to mean "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." However, the Service, under limited circumstances, may issue permits to authorize incidental take; i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found at 50 CFR 17.32 and 17.22, respectively. Among other criteria, issuance of such permits must not jeopardize the existence of federally listed fish, wildlife, or plants.

The Applicant proposes to construct the Nevada Space Museum and associated facilities, the Science and Technology Center, and other commercial uses, on a total of 100 acres of land. In total, 823.22 acres of land would be transferred from the Bureau of Land Management to Nye County pursuant to Public Laws 106-113 and 106-248, as amended, and the Recreation and Public Purposes Act of 1926, of which a total of 100 acres would be permanently removed with the remaining acres to be managed for natural resource values and desert tortoise habitat. The project site is immediately north of the intersection of U.S. Highway 95 and Nevada State Route 373 in southern Nye County, Nevada. The land to be conveyed is irregular in shape with the southern boundary delineated by the centerline of U.S. Highway 95 and existing private development. The western boundary is coincident with the western boundary of T. 15 S., R. 49 E., Section 13 and property lines of private parcels, and the eastern boundary is coincident with the eastern boundary of T. 15 S., R. 50 E., Section 18. The northern boundary is coincident with the northern boundary of Section 13, the northern boundary of the western half of Section 18, and the east-west centerline through the eastern half of Section 18. The project site is currently undeveloped, however, existing and ongoing disturbances dominate the site. Prevalent vegetation on the conveyed lands is creosote bush (*Larrea tridentata*) and white bursage (*Ambrosia dumosa*).

In 2000, biologists conducted surveys for desert tortoise on the conveyed lands and determined that the area consisted of poor desert tortoise habitat. No desert tortoises were observed during the survey, however one old desert tortoise burrow and a single scat were found. Based on these surveys, the Service concluded that the development of the project site would not result in direct take of the desert tortoise.

The Applicant proposes to implement measures to minimize and mitigate for the removal of suitable desert tortoise habitat from the 100-acre project site and impacts to desert tortoise that may occur in the area. Specifically, they propose to (1) implement desert tortoise awareness and education programs, including signs on the project site; (2) provide funding to purchase materials to revegetate off-site desert tortoise habitat; and (3) undertake various measures during and after development activities at the project site to minimize potential impacts to desert tortoise and its habitat.

The Service's Proposed Action consists of the issuance of an incidental take permit and implementation of the HCP, which includes measures to minimize and mitigate impacts of the project on the desert tortoise. Two alternatives to the taking of desert tortoise under the Proposed Action are considered in the HCP. Under the No-Action alternative the project site would not be developed and the HCP would not be implemented. Without the HCP, the desert tortoise would not benefit from mitigation measures in the Proposed Action. Non-native plants would continue to invade the project site where disturbance currently exists, human disturbances of the area would likely continue, and no contribution to the preservation and management of high quality, off-site desert tortoise habitat would occur. The No-Action alternative would also economically impact Nye County.

Under the Alternate Site Selection alternative, a different site would be used for commercial and community development. This alternative is considered infeasible because (1) the lands to be conveyed to Nye County have been identified through Public Law 106-113, as amended; (2) most other lands outside the conveyance area have not been identified by the Bureau of Land Management (BLM) for disposal; and (3) lands outside the conveyance area that have been identified for disposal by the BLM have equal or better quality desert tortoise habitat that would be impacted. Implementation of the Alternate Site Selection alternative would result in similar impacts as the proposed project site, and would not substantially benefit the desert tortoise.

The Service has made a preliminary determination that the HCP qualifies as a "low-effect" plan as defined by the Habitat Conservation Planning Handbook (November 1996). Our determination that a habitat conservation plan qualifies as a low-effect plan is based on the following three criteria: (1) Implementation of the plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the plan, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. As more fully explained in our Environmental Action Statement, the

Applicant's proposal to construct the museum and technology center qualifies as a "low-effect" plan for the following reasons:

1. Approval of the HCP would result in minor or negligible effects on the desert tortoise and its habitat. The Service does not anticipate significant direct or cumulative effects to the desert tortoise resulting from development of the project site.

2. Approval of the HCP would not have adverse effects on unique geographic, historic or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the HCP would not result in any cumulative or growth inducing impacts and, therefore, would not result in significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate any Federal, State, local or tribal laws.

5. Approval of the HCP would not establish a precedent for future actions or represent a decision in principle about future actions with potentially significant environmental effects.

The Service therefore has made a preliminary determination that approval of the HCP qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Based upon this preliminary determination, we do not intend to prepare further National Environmental Policy Act documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

The Service provides this notice pursuant to section 10(c) of the Endangered Species Act. We will evaluate the permit application, the HCP, and comments submitted thereon to determine whether the application meets the requirements of section 10 (a) of the Act. If the requirements are met, the Service will issue a permit to Nye County. We will make the final permit decision no sooner than 30 days from the date of this notice.

Dated: May 31, 2002.

D. Kenneth McDermond,

Deputy Manager, California/Nevada Operations Office, Sacramento, California.
[FR Doc. 02-14397 Filed 6-7-02; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension and revision of a currently approved information collection (OMB Control Number 1010-0114).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are submitting to OMB for review and approval an information collection request (ICR) for the paperwork requirements in the regulations under 30 CFR part 250, subpart A, General, and associated forms and Notices to Lessees and Operators (NTLs).

DATES: Submit written comments by July 10, 2002.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010-0114), 725 17th Street, NW, Washington, DC 20503. Mail or hand-carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170-4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787-1600. You may also contact Alexis London to obtain a copy at no cost of the forms and regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR part 250, subpart A, General.

Forms: MMS-132, Hurricane and Tropical Storm Evacuation and Production Curtailment Statistics, Gulf of Mexico Region (GOMR); MMS-1132, Designation of Operator; MMS-1832, Notification of Incidents of Noncompliance (INCs).

OMB Control Number: 1010-0114.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas

resources in a manner which is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. Section 1332(6) requires that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well trained personnel using technology, precautions, and other techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstructions to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property or endanger life or health."

Federal policy and statutes require us to recover the cost of services that confer special benefits to identifiable non-Federal recipients. Section 250.165 requires a State lessee to pay a fee when applying for a right-of-use and easement on the OCS. The Independent Offices Appropriation Act (31 U.S.C. 9701), OMB Circular A-25, and the Omnibus Appropriations Bill (Pub. L. 104-133, 110 Stat. 1321, April 26, 1996) authorize agencies to collect these fees to reimburse us for the cost to process applications or assessments. This fee is the same as that required for filing pipeline right-of-way applications as specified in § 250.1010(a).

This notice concerns the reporting and recordkeeping elements of the 30 CFR part 250, subpart A, General regulations and related forms and NTLs that clarify and provide additional guidance on some aspects of the regulations. Responses are mandatory. No questions of a "sensitive" nature are asked. MMS will protect proprietary information according to 30 CFR 250.196 (Data and information to be made available to the public), 30 CFR part 252 (OCS Oil and Gas Information Program), and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2). MMS OCS Regions use the information collected under subpart A to ensure that operations on the OCS are carried out in a safe and pollution-free manner, do not interfere with the rights of other users on the OCS, and balance the development of OCS resources with the protection of the environment.

Frequency: The frequency is "on occasion" for most of the requirements in subpart A. The form MMS-132 is

submitted daily during the period of emergency.

Estimated Number and Description of Respondents: Approximately one State and 130 Federal OCS oil and gas or sulphur lessees.

Estimated Reporting and Recordkeeping "Hour" Burden: The estimated annual "hour" burden for this information collection is a total of 22,467 burden hours. The following chart details the individual components and estimated hour burdens. In

calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burdens.

Citation 30 CFR part 250 subpart A and related forms/NTLs	Reporting or recordkeeping requirement	Hour bur- den	Average annual number	Annual burden hours
104; Form MMS-1832	Appeal orders or decisions; appeal INCs—burden included with 30 CFR 290 (1010-0121)			0
109(a);110	Submit welding, burning, and hot tapping plans	2	170 plans	340
115; 116	Request determination of well producibility; submit data & responses information; notify MMS of test.	3	125	375
118; 119; 121; 124	Apply for injection or subsurface storage of gas	10	10 applications	100
130-133; Form MMS-1832 ..	Submit "green" response copy of form MMS-1832 indicating date violations (INCs) corrected.	2	1,500 forms (4245 actual INCs).	3,000
	Request reconsideration from issuance of an INC	1/2	215 requests	108
	Request waiver of 14-day response time.	1/2	425 waivers	213
	Notify MMS before returning to operations if shut-in	1/4	2,190 notices	548
133	Request reimbursement for food, quarters, and transportation provided to MMS representatives (OCS Lands Act specifies reimbursement; no requests received in many years; minimal burden).	1	request	1
135 MMS internal process	Submit Performance Improvement Plan for enforcement actions.	40	8 plans	320
140	Request various oral approvals not specifically covered elsewhere in regulatory requirements.	1/4	200 requests	50
141	Request approval to use new or alternative procedures, including BAST not specifically covered elsewhere in regulatory requirements.	20	15 requests	300
142	Request approval of departure from operating requirements not specifically covered elsewhere in regulatory requirements.	2	50 requests	100
143; 144; 145; Form MMS-1123.	Submit designation of operator & report change of address or notice of termination; submit designation of local agent.	1/4	1,280 forms	320
150; 151; 152; 154(a)	Name and identify facilities, etc., with signs	2	155 new or replacement signs.	310
150; 154(b)	Identify wells with paint or signs	1	1,415 new wells	1,415
160; 161	OCS lessees: Apply for new or modified right of use and easement to construct and maintain off-lease platforms, artificial islands, and installations and other devices.	5	30 applications	150
165	State lessees: Apply for new or modified right-of-use and easement to construct and maintain off-lease platforms, artificial islands, and installations and other devices.	5	1 application	5
166	State lessees: Furnish surety bond—burden included with 30 CFR 256 (1010-0006)			0
168; 170; 171; 172; 174; 175; 177; 180(b), (d).	Request suspension of operations or production; submit schedule of work hours leading to commencement.	10	250 requests	2,500
	Submit progress reports on suspension of operations or production as condition of approval.	2	1,070 reports	2,140

Citation 30 CFR part 250 subpart A and related forms/NTLs	Reporting or recordkeeping requirement	Hour bur- den	Average annual number	Annual burden hours
177(a)	Conduct site-specific study; submit results. No instances requiring this study in several years—could be necessary if a situation occurred such as severe damage to a platform or structure caused by a hurricane or a vessel collision.	80	1 study/report	80
177(b), (c), (d); 182; 183, 185; 194.	Various references to submitting new, revised, or modified exploration plan, development and production plan, or development operations coordination document, and related surveys and reports—burden included with 30 CFR 250, subpart B (1010-0049).			0
180(a), (f), (g), (h), (i), (j)	Notify and submit report on various leaseholding operations and lease production activities.	1/2	1,500 reports	750
180(a), (b), (c)	When requested, submit production data to demonstrate production in paying quantities to maintain lease beyond primary term.	6	20 submissions	120
180(e)	Request more than 180 days to resume operations	3	5 requests	15
181(d); 182(b), 183(b)(2)	Request termination of suspension and cancellation of lease (no requests in recent years for termination/cancellation of a lease; minimal burden).	20	2 requests	40
184	Request compensation for lease cancellation mandated by the OCS Lands Act (no qualified lease cancellations in many years; minimal burden compared to benefit).	50	1 request	50
190	Submit requests, applications, and notices under various regulations—burden included with applicable requirement.	.....	.....	0
191	Report accidents, deaths, serious injuries, fires, explosions and blowouts.	7	135 reports	945
191(a)	Report spills of oil—burden included with 30 CFR 254 (1010-0091).			0
192; Form MMS-132	Daily report of evacuation statistics for natural occurrence/hurricane (form MMS-132 in the GOMR) when circumstances warrant.	1	620 reports or forms	620
193	Report apparent violations or non-compliance	1 1/2	2 reports	3
194 NTL exception requests	Request departures from conducting archaeological resources surveys and/or submitting reports in GOMR.	1	95 requests	95
194(c)	Report archaeological discoveries (only one instance in many years; minimal burden).	1	1 report	1
195	Submit data/information for post-lease geological and geophysical activity and request reimbursement—burden included with 30 CFR 251 (1010-0048).			0
Subtotal—Reporting			11,492	15,014
108(a)	Retain records of crane inspection, testing, and maintenance for 2 years; crane operator qualifications 4 years.	2	2,540 recordkeepers	5,080
109(b)	Retain welding, burning, and hot tapping plan and approval for the life of the facility.	1/2 hour	4,225 operations	2,113
132(b)(3)	Make available all records related to inspections not specifically covered elsewhere in regulatory requirements.	1	130 lessees/operators	260
Subtotal—Recordkeeping			6,895	7,453
Total Hour Burden			18,387	22,467

Estimated Reporting and Recordkeeping “Non-Hour Cost” Burden: The application filing fee required in § 250.165 is the only

paperwork cost burden identified for the subpart A regulations. This filing fee is currently set at \$2,350.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an

agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a

collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency “* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *”. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on November 26, 2001, we published a **Federal Register** notice (66 FR 59024) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control numbers for the information collection requirements imposed by the 30 CFR part 250 regulations and forms. That regulation also informs the public that they may comment at any time on these collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts. The required PRA public disclosure and comment statements are displayed on forms MMS-132, MMS-1123, and MMS-1832.

If you wish to comment in response to this notice, send your comments directly to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by July 10, 2002.

Public Comment Policy: 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 may be circumstances in which we would withhold from the record a respondent’s identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this

prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208-7744.

Dated: April 25, 2002.

E.P. Danenberger

Chief, Engineering and Operations Division.

[FR Doc. 02-14476 Filed 6-7-02; 8:45 am]

BILLING CODE 4310-MR-P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services (COPS)

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: New Collection Secure Our Schools Act Grant Application Kit.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until August 9, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gretchen DePasquale, (202) 305-7780, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged.

Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

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

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

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

Overview of this information collection:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Secure Our Schools Act Grant Application Kit.

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

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, local or tribal government law enforcement agencies in collaboration with schools to improve security in and on school grounds. Other: None. The Secure Our Schools Act Grant Program allows recipients the opportunity to establish and enhance a variety of school safety equipment and/or programs. The information collected will be used by the COPS Office to determine the grantee’s eligibility for funding under the Secure Our Schools Act Grant Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 100 response. The estimated amount of time required for the average respondent to respond is 8 hours.

(6) *As estimate of the total public burden (in hours) associated with the collection:* There are 900 estimated total public burden hours associated with this information.

If additional information is required contact: Brenda Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: June 4, 2002.

Brenda Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02-14443 Filed 6-7-02; 8:45 am]

BILLING CODE 4410-AT-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Consistent with 28 CFR 50.7, notice is hereby given that on May 17, 2002, proposed consent decrees ("Consent Decrees" in *United States v. Catalina Furniture Co., Inc., and Capital Cabinet Corporation*, Civil Action No. CIV-02-03974 (GHK)(RZx) were lodged with the United States District Court for the Central District of California.

The Consent Decrees resolve claims that the United States asserted against Catalina and Capital in a civil complaint filed concurrently with the lodging of the Consent Decrees. The complaint alleges violations of the Clean Air Act at a facility located in La Mirada, California owned by Capital and operated by Catalina. Catalina operated a wood furniture manufacturing facility. Catalina leased the facility along with four spray booths from Capital. Capital transferred its permits for the spray booths to Catalina. Catalina installed an additional eleven spray booths. The complaint alleges that Catalina failed to obtain permits to construct or operate the spray booths; that Catalina failed to install equipment to meet the Lowest Achievable Emissions Rate; that Catalina failed to obtain emission reduction credits; that Capital allowed the operation of its spray booths without obtaining permits or installing necessary control equipment; and that Capital illegally attempted to transfer its permits, all in violation of the Clean Air Act and the State Implementation Plan. Catalina has ceased operations at the facility and its assets have been sold.

The Consent Decrees requires Catalina to pay a civil penalty of \$50,000, plus interest and Capital to pay a civil penalty of \$30,000 plus interest. Capital must surrender its permits for the four spray booths and relinquish any right to emission reduction credits. Catalina agrees not to re-commence operations at the La Mirada facility. Catalina also agrees that if it begins operations of coating equipment in the South Coast Air Basin in California it will obtain permits and limit emissions by using ultra-low VOC content coatings.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments

relating to the Consent Decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Catalina Furniture Co., Inc. and Capital Cabinet Corporation*, Civil Action No. CIV-02-03974 (GHK)(RZx) and D.J. Ref. 90-5-2-1-06468.

The Consent Decrees may be examined at the Office of the United States Attorney, Federal Building, Suite 7516, 300 North Los Angeles Street, Los Angeles, California 90015 or at EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105. A copy of the Consent 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 number (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy, please enclose a check in the amount of \$3.00 (for the Capital Decree) or \$5.00 (for the Catalina Decree) (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. 02-14401 Filed 6-7-02; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 268-2002]

Privacy Act of 1974; Notice of the Removal of Two Systems of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Justice (DOJ) is removing two published Privacy Act systems of records: the Justice Management Division's (JMD) "Accounting System for the Offices, Boards and Divisions and the United States Marshals Service, JUSTICE/JMD-007;" and the Office of Justice Programs' (OJP) "Financial Management System, JUSTICE/OJP-005."

The reasons for the removal of these two systems of records is that a Department-wide system, entitled "Accounting Systems for the Department of Justice, DOJ-001", published May 28, 1999 at 64 FR 29069, replaced systems which existed for separate Department components. DOJ-001 also included new disclosure provisions. As a result, it is no longer necessary to maintain these two systems of records. Therefore, the "Accounting

System for the Offices, Boards and Divisions and the United States Marshals Service," last published in the **Federal Register** on October 17, 1988 at 53 FR 40527, are removed from the Department's compilation of Privacy Act systems.

Dated: May 30, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

[FR Doc. 02-14400 Filed 6-7-02; 8:45 am]

BILLING CODE 4410-CP-M

DEPARTMENT OF JUSTICE

Motor Vehicles; Alternative Fuel Vehicle (AFV) Report

AGENCY: Justice Management Division.

ACTION: Notice of Availability—Fleet (AFV) Report.

SUMMARY: In accordance with the Energy Policy Act of 1992 (EPA Act) (42 U.S.C. 13211-13219) as amended by the Energy Conservation Reauthorization Act of 1998 (Pub. L. 105-388), and Executive Order (EO) 13149, "Greening the Government Through Federal Fleet and Transportation Efficiency," the Department of Justice's annual alternative fuel reports are available on the following Department of Justice Web site: <http://www.usdoj.gov/jmd/publications/publications.htm>

FOR FURTHER INFORMATION CONTACT: Janet C. Dobbs, (202) 514-6755.

Dated: May 30, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

[FR Doc. 02-14399 Filed 6-7-02; 8:45 am]

BILLING CODE 4410-CW-M

DEPARTMENT OF JUSTICE

Antitrust Division

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: Extension of a currently approved collection; Department of Justice Federal Coal Lease Review Information.

The Department of Justice (DOJ), Antitrust Division, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to

obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until August 9, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jill Ptacek, Antitrust Division, Department of Justice, 325 7th Street NW, Washington, DC 20350.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

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

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

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

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Department of Justice Federal Coal Lease Review Information.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATR-139 and ATR-140.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* *Primary:* Business or other for Profit. *Other:* none. The Department of Justice evaluates the competitive impact of issuances, transfers and exchanges of federal coal leases. These forms seek information regarding a prospective coal lessee's coal reserves subject to the federal lease. The Department uses this information to determine whether the

coal lease transfer is consistent with the antitrust laws.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 20 respondents will complete the form within approximately 2 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 40 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW, Washington, DC 20530.

Dated: June 5, 2002.

Brenda E. Dyer,

*Department Deputy Clearance Officer,
Department of Justice.*

[FR Doc. 02-14447 Filed 6-7-02; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The PCAD Venture Team

Notice is hereby given that, on April 17, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The PCAD Venture Team has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, International Business Machines Corporation, Yorktown Heights, NY has been added as a party to this venture. Also, SDL, Inc., San Jose, CA; Hewlett-Packard, Westlake Village, CA; and Northern Telecom, Inc., McLean, VA have been dropped as parties to this venture. Rsoft, Ossining, NY changed its name to Rsoft Design Group, Ossining, NY.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and The PCAD Venture Team intends to file additional written notification disclosing all changes in membership.

On February 10, 1999, The PCAD Venture Team filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 26, 1999 (64 FR 28520).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02-14402 Filed 6-7-02; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 60-day notice of information collection under review; Extension of a currently approved collection; Application for Registration (DEA Form 224), Application for Registration Renewal (DEA Form 224A) and Affidavit for Chairn Renewal DEA Retail Pharmacy Registration (DEA Form 224B).

The Department of Justice, Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until August 9, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, need a copy of the proposed information collection instrument with instructions or need additional information, please contact Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537.

Written comments and suggestions are requested from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Overview of this information collection:

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Application for Registration (DEA Form 224), Application for Registration Renewal (DEA Form 224A) and Affidavit for Chain Renewal DEA Retail Pharmacy Registration (DEA Form 224B).

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form No.: DEA Forms 224, 224a and 224B. Applicable component of the Department sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Not-for-Profit Institutions; State, Local or Tribal Government. All firms and individuals who distribute or dispense controlled substances must register with the DEA under the Controlled Substances Act. Registration is needed for control measures over legal handlers of controlled substances, and is used to monitor their activities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* There are approximately 67,451 respondents completing DEA Form 224, within 12 minutes for each response, resulting in approximately 13,490 burden hours. There are approximately 357,510 respondents completing DEA Form 224A, within 12 minutes for each response, resulting in approximately 71,502 burden hours. There are approximately 48 respondents completing DEA Form 224B, within 5 hours for each response, resulting approximately 240 burden hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are a total of approximately 85,232 annual burden

hours associated with this information collection.

If additional information is required contact Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: June 4, 2002.

Brenda E. Dyer,

*Department Deputy Clearance Officer,
Department of Justice.*

[FR Doc. 02-14444 Filed 6-7-02; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 60-day notice of information collection under review; Extension of a currently approved collection, Application for Registration (DEA Form 363), Application for Registration Renewal (DEA Form 363a), and Application for Registration Renewal (chain) (DEA Form 363b).

The Department of Justice, Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until August 9, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, need a copy of the proposed information collection instrument with instructions or need additional information, please contact Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537.

Written comments and suggestions are requested from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

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

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

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

Overview of this information collection:

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Application for Registration (DEA Form 363), Application for Registration Renewal (DEA Form 363a), and Application for Registration Renewal (chain) (DEA Form 363b).

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form No.: DEA Forms 363, 363a, 363b. Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Not-for-profit institutions. Practitioners who dispense narcotic drugs to individuals for maintenance or detoxification treatment must register with the DEA under the Narcotic Addiction Treatment Act of 1974. Registration is needed for control measures and is used to prevent diversions.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* There are approximately 100 respondents completing form DEA 363, which will take the average respondent about .5 hours to complete resulting in approximately 50 annual burden hours. There are approximately 1,151 respondents completing form DEA 363a which will take the average respondent about .5 hours to complete resulting in approximately 575.5 annual burden hours. Currently no one has completed the form DEA 363b.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are 625.5 estimated total annual public burden hours

associated with this information collection.

If additional information is required contact Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: June 4, 2002.

Brenda E. Dyer,

*Department Deputy Clearance Officer,
Department of Justice.*

[FR Doc. 02-14445 Filed 6-7-02; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 60-day Notice of Information Collection Under Review; Extension of a currently approved collection; Application for Registration (DEA Form 225); Application for Registration Renewal (DEA Form 225A); Affidavit for Chain Renewal (DEA Form 225B).

The Department of Justice Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until August 9, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, need a copy of the proposed information collection instrument with instructions or need additional information, please contact Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537.

Written comments and suggestions are requested from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

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

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

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

Overview of this information collection:

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Application for Registration (DEA Form 225); Application for Registration Renewal (DEA Form 225A); Affidavit for Chain Renewal (DEA Form 225B).

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form No.: DEA Forms 225, 225a, 225B. Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. The Controlled Substances Act requires all persons who manufacture, distribute, import, export, conduct research or dispense controlled substances to register with DEA. Registration provides a closed system of distribution to control the flow of controlled substances through the distribution chain.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* There are approximately 1,353 respondents completing DEA Form 225, within 30 minutes for each response, resulting in approximately 676.5 burden hours. There are approximately 10,019 respondents completing DEA Form 225A, within 30 minutes for each response, resulting in approximately 5,009.5 burden hours. There are approximately 7 respondents completing DEA Form 225B, within 1 hour for each response, resulting in approximately 7 burden hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are a total of approximately 5,693 annual burden

hours associated with this information collection.

If additional information is required contact Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: June 4, 2002.

Brenda E. Dyer,

*Department Deputy Clearance Officer,
Department of Justice.*

[FR Doc. 02-14446 Filed 6-7-02; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Consolidation Coal Company

[Docket No. M-2002-045-C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241-1421 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Blacksville No. 2 Mine (I.D. No. 46-01968) located in Monongalia County, West Virginia. The petitioner proposes to establish check point numbers B-CK-1, CK-2 and B-CK-3 to measure air quality and quantity at the inlet to the affected aircourse. The petitioner will also establish check point numbers B-CK-4, B-CK-5 and B-CK-6 to measure air quality and quantity at the outlet from the affected aircourse. The petitioner states that due to deteriorating roof conditions, traveling the affected areas of the return aircourse would expose persons to hazardous conditions. The petitioner asserts that the check points and all approaches to the check points will be maintained in a safe condition and a certified person will test the methane and quantity of air at each check point on a weekly basis. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to "comments@msha.gov," or on a computer disk along with an original

hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 10, 2002. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 31st day of May 2002.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 02-14398 Filed 6-7-02; 8:45 am]

BILLING CODE 4510-43-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR-1218-0232(2002)]

Crawler, Locomotive and Truck Cranes, Inspection Records; Extension of the Office of Management and Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA solicits public comment concerning its request to extend OMB approval of the information-collection requirements specified in paragraph (b)(2) of the Crawler, Locomotive, and Truck Crane in Construction Standard (29 CFR 1926.550); this paragraph requires employers to inspect and properly maintain crawler, locomotive, and truck cranes and to ensure safe operating conditions for employees.

DATES: Submit written comments on or before August 9, 2002.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR-1218-0232(2002), OSHA, U.S. Department of Labor, Room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-2350. Commenters may transmit written comments of 10 pages or less by facsimile to: (202) 693-1648.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Martinez, Directorate of Policy, Office of Regulatory Analysis, OSHA, U.S. Department of Labor, Room N-3641, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693-1953. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified by the Crawler,

Locomotive and Trade Crane Standard is available for inspection and copying in the Docket Office, or by requesting a copy from Todd Owen at (202) 693-2444. For electronic copies of the ICR contact OSHA on the Internet at <http://www.osha.gov/comp-links.html> and select "Information Collection Requests."

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultant program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA-95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information-collection burden is correct.

The Crawler, Locomotive and Truck Crane Standard (i.e., "the Standard") specifies the following paperwork requirements, as well as how they use it.

Paragraph (b)(2) requires the employer to prepare and maintain a certification record which includes the date, listing of critical items inspected, signature of person performing the inspections, and a serial number or identifier of the crane inspected as specified in ANSI B30.5-1968, Safety Code for Crawler, Locomotive and Truck Cranes.

Establishing and maintaining written records of the monthly inspections informs employers and employees regarding serious, life threatening equipment failure.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Actions

OPSHA proposes to extend OMB's previous approval of the recordkeeping (paperwork) requirement specified in paragraph (b)(2) of the Crawler, Locomotive and Truck crane Standard (29 CFR 1926.550). OSHA is proposing to decrease the number of burden hours for the paperwork requirement specified by the Standard. This decrease is due to the increasing number of crawler, locomotive or truck cranes that are owned by rental companies which establish and maintain written records as a usual and customary business practice. The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of this information-collection requirement.

Type of Review: Extension of currently approved information-collection requirements.

Title: Crawler, Locomotive and Truck Crane Standard.

OMB Number: 1218-0232.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local or tribal governments.

Number of Respondents: 21,238.

Frequency of Response: Monthly.

Total Responses: 254,856.

Average Time per Response: 30 minutes.

Estimated Total Burden Hours: 127,428.

Estimated Cost (Operation and Maintenance): \$0.

IV. Authority and Signature

John L Henshaw, Assistant Secretary of Labor of Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 3-2000 (65 FR 50017).

Signed at Washington, DC, on June 3rd, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02-14436 Filed 6-7-02; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF LABOR**Occupational Safety and Health Administration**

[Docket No. ICR-1218-0231(2002)]

Material Hoists, Personnel Hoists, and Elevators, Posting Requirements, and Certification Records for Test and Inspections in Construction; Extension of the Office of Management and Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.**ACTION:** Request for comment.

SUMMARY: OSHA solicits public comment concerning its request to extend OMB approval of the information-collection requirements specified in the Material Hoists, Personnel Hoists, and Elevators Standard in Construction (29 CFR 1926.552); Paragraph (a)(2), (b)(1)(i), (c)(10), and (c)(15) require specific information such as; rated load capacity; operating speed and special hazard warnings among others to be posted on the equipment. Paragraph (c)(15) requires that a test and inspection of all functions and safety devices be made by a competent person at not more than 3 month intervals and following any alteration of the equipment. The inspections need to be certified by a competent person, dated and the hoist identified.

DATES: Submit written comments on or before August 9, 2002.**ADDRESSES:** Submit written comments to the Docket Office, Docket No. ICR-1218-0231(2002), OSHA, U.S. Department of Labor, Room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-2350. Commenters may transit written comments of 10 pages or less by facsimile to: (202) 693-1648.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Martinez, Directorate of Policy, Office of Regulatory Analysis, OSHA, U.S. Department of Labor, Room N-3627, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-1953. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified by the Material Hoists, Personnel Hoists, and Elevators Standard in Construction is available for inspection and copying in the Docket Office, or by requesting a copy from Todd Owen at (202) 693-2444. For electronic copies of the ICR contact OSHA on the Internet at <http://www.osha.gov/comp-links.html> and select "Information Collection Requests."

www.osha.gov/comp-links.html and select "Information Collection Requests."

SUPPLEMENTARY INFORMATION:**I. Background**

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirement in accordance with the Paperwork Reduction Act of 1995 (PRA-95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information-collection burden is correct.

The Material Hoists, Personnel Hoists, and Elevators Standard (*i.e.*, "the Standard") specifies the following paperwork requirements, as well as how they use it.

- **Posting Requirements:** Paragraphs (a)(2) and (c)(10) specifies that the rated load capacities, operating speed and special hazard warning be posted securely on cars, platforms, personnel hoists. Paragraphs (b)(1)(i) specifies that operating rules that have been established be posted at the operator's station of the hoist, such rules shall include signal system, allowable line speed for various loads.

- **Personnel Hoists Records for Test and Inspection:** Paragraph (c)(15) specifies that the employer perform tests and inspection on personnel hoist at no more than 3 month intervals and following any alterations on the equipment. In addition the employer must certify and maintain these records to show the compliance officer upon inspection.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and transmission techniques.

III. Proposed Actions

OSHA proposes to extend OMB's previous approval of the recordkeeping (paperwork) requirement specified in the Material Hoists, Personnel Hoists, and Elevators Standard (29 CFR 1926.552). The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of this information-collection requirement. The Agency has requested an increase of 14,431 burden hours. It has been determined 3 additional posting requirements, also updated the number of hoists making is consistent with other crane and derrick paperwork packages.

Type of Review: Extension of currently approved information-collection requirements.

Title: Material Hoists, Personnel Hoists, and Elevators; Posting Requirements and Test and Inspection Records.

OMB Number: 1218-0231.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local or tribal governments.

Number of Respondents: 26,547.

Frequency of Response: On Occasion; Quarterly.

Total Responses: 26,547.

Average Time per Response: 15 minutes or 5 minutes.

Estimated Total Burden Hours: 30,271.

Estimated Cost (Operation and Maintenance): \$0.

IV. Authority and Signature

John L Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 3-2000 (65 FR 50017).

Signed at Washington, DC on June 3rd, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02-14437 Filed 6-7-02; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 02-074]

National Environmental Policy Act; Pluto-Kuiper Belt Mission

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Information update and reopening of scoping period.

SUMMARY: On October 7, 1998, NASA published in the **Federal Register** a notice of intent (NOI) to prepare an environmental impact statement (EIS) for NASA's Pluto-Kuiper Express Mission. The notice was issued in accordance with the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 et seq.) and Council on Environmental Quality and NASA's implementing regulations. Since publication of the NOI, NASA prepared further evaluations of the mission design, including the alternatives indicated in the NOI. These evaluations have resulted in refinement of NASA's original concept for the mission, specifically with respect to details such as specific launch dates, launch vehicle options, and the use of an advanced radioisotope power source (RPS) for onboard power. The renamed Pluto-Kuiper Belt mission is now proposed for launch in January 2006 on an expendable launch vehicle from Cape Canaveral Air Force Station (CCAFS), Florida, with an arrival at Pluto not later than 2020. NASA's original concept has also been modified to utilize a conventional radioisotope thermoelectric generator (RTG) instead of an advanced RPS originally envisioned. It is not anticipated that any radioisotope heater units (RHU) would be needed.

The draft EIS will address the environmental impacts associated with launching and operating the mission, the No Action alternative, and other alternatives. This notice informs the public of the revised proposal, reopens the scoping period, and solicits new public comment.

DATES: Interested parties are invited to submit comments on environmental concerns in writing on or before July 25, 2002, to assure full consideration during the extended scoping process.

ADDRESSES: Written comments should be addressed to Mr. Kurt Lindstrom, NASA Headquarters, Code SE, Washington, DC 20546-0001. Comments may also be sent by electronic mail to: osspluto@hq.nasa.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Kurt Lindstrom, Code SE, NASA Headquarters, Washington, DC 20546-0001; 202-358-1588; electronic mail: osspluto@hq.nasa.gov.

SUPPLEMENTARY INFORMATION: The October 7, 1998, NOI described the purpose and structure of the EIS for the proposed Pluto-Kuiper Express mission.

At that time NASA's original concept was to launch the Pluto-Kuiper Express spacecraft in November 2003 or in December 2004 on either the Space Shuttle from Kennedy Space Center, Florida, or an expendable launch vehicle from CCAFS, Florida. Both proposed trajectories would have involved a Jupiter gravity assist maneuver, allowing the spacecraft to arrive at Pluto in time to take advantage of its close orbital position relative to the Sun. The original concept for the Pluto-Kuiper Express mission included the potential use of a new advanced RPS under study for deep-space exploration, and approximately 80 RHUs. NASA anticipated that an RPS, due to improved power conversion system efficiency, would require less radioactive material (plutonium dioxide) than a conventional RTG.

Since publication of the 1998 NOI, NASA has revised its original concept for the Pluto-Kuiper Express mission, renamed the Pluto-Kuiper Belt mission. As a result of more detailed mission design studies and programmatic evaluations, NASA has determined that launch of the Pluto-Kuiper Belt spacecraft is not feasible before January 2006, and therefore has eliminated the November 2003 and December 2004 launch opportunities from further consideration. The January 2006 launch opportunity is now the launch opportunity for the proposed mission. The proposed mission would still require a Jupiter gravity assist trajectory. The flight time to Pluto with the new opportunity would be 10 to 12 years, with the spacecraft arriving at Pluto before 2020. After 2006, Jupiter will not be in the proper alignment to provide a gravity assist toward Pluto until 2015. Arrival by 2020 gives the best opportunity to study Pluto near its closest approach to the sun, which will provide the best conditions for scientific observations. A backup launch opportunity may exist in 2007 using a direct trajectory to Pluto. While direct trajectories to Pluto are available approximately every 13 months, after 2007 the flight times are projected to be too long to provide timely return of scientific data.

The proposed 2006 launch date for the mission also affects potential use of the Space Shuttle, which was proposed in the original NOI as the primary launch vehicle. For programmatic and technical reasons, the Space Shuttle is not proposed for this mission. As proposed, the Pluto-Kuiper Belt mission would be launched on an expendable launch vehicle.

Use of an RPS on the proposed mission would be dependent upon full-

scale development of a new power conversion system and qualification testing of the RPS to assure its suitability for long-duration space missions. The development and testing processes would not result in an RPS that would be fully qualified by 2006 for use on the proposed mission. Thus, the mission concept has been revised to include a conventional RTG to provide electrical power for the Pluto-Kuiper Belt spacecraft. Because a conventional RTG would generate a greater amount of heat, RHUs would no longer be needed to provide auxiliary heat for spacecraft thermal control.

In preparing the Pluto-Kuiper Belt mission draft EIS, NASA will consider comments from the scoping process initiated by publication of the original 1998 NOI, and any new comments received in response to this notice.

Jeffrey E. Sutton,

Assistant Administrator for Management Systems.

[FR Doc. 02-14409 Filed 6-7-02; 8:45 am]

BILLING CODE 7510-01-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02-073]

NASA Advisory Council, Biological and Physical Research Advisory Committee Commercial Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Biological and Physical Research Advisory Committee, Commercial Advisory Subcommittee.

DATES: Wednesday, June 19, 2002, 8 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 3P44, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Candace Livingston, Code UM, National Aeronautics and Space Administration, Washington, DC 20546, 202-358-0697.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public to the seating capacity of the room. Advance notice of attendance to the Executive Secretary is requested. The agenda for the meeting will include the following topics:

—Report of the REMAP Task Force Team

- Status of the entire NASA Commercial Program
- Status of the Non-Government Organization
- Committee Concerns
- Staffing the Division
- Public Information on Commercial Accomplishments
- Role of the CAS and Its Membership

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: May 31, 2002.

Sylvia K. Kraemer,

*Advisory Committee Management Officer,
National Aeronautics and Space Administration.*

[FR Doc. 02-14408 Filed 6-7-02; 8:45 am]

BILLING CODE 7510-01-P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of June 10, 17, 24, July 1, 8, 15, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 10, 2002

There are no meetings scheduled for the Week of June 10, 2002.

Week of June 17, 2002—Tentative

There are no meetings scheduled for the Week of June 17, 2002.

Week of June 24, 2002—Tentative

Tuesday, June 25, 2002

1:55 p.m.—Affirmation Session (Public Meeting) (If needed)

2 p.m.—Discussion of intragovernmental Issues (Closed—Ex. 1)

Wednesday, June 26, 2002

10:30 a.m.—All Employees Meeting (Public Meeting)

1:30 p.m.—All Employees Meeting (Public Meeting)

Week of July 1, 2002—Tentative

Monday, July 1, 2002

2 p.m.—Discussion of International Safeguards Issues (Closed—Ex. 9)

Week of July 8, 2002—Tentative

Wednesday, July 10, 2002

9:25 a.m.—Affirmation Session (Public Meeting) (If needed)

9:30 a.m.—Briefing on License Renewal Program and Power Uprate Review Activities (Public Meeting) (Contacts: Noel Dudley, 301-415-1154, for license renewal program; Mohammed Shuaibi, 301-415-2859, for power uprate review activities)

This meeting will be webcast live at the Web address—www.nrc.gov

2 p.m.—Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301-415-7360)

This meeting will be webcast live at the Web address—www.nrc.gov

Week of July 15, 2002—Tentative

Thursday, July 18, 2002

1:55 p.m.—Affirmation Session (Public Meeting) (if needed)

2 p.m.—Briefing on Special Review Group Response to Differing Professional Opinion/Differing Professional View (DPO/DPV) Review (Public Meeting)(Contact: John Craig, 301-415-1703)

This meeting will be webcast live at the Web address—www.nrc.gov

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292. Contact person for more information: David Louis Gamberoni (301) 415-1651.

The NRC Commission Meeting Schedule can be found on the Internet at: www.nrc.gov/what-we-do/policy-making/schedule.html.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969). In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: June 6, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02-14616 Filed 6-6-02; 11:57 am]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

Solicitation of Public Comments on Agency Guidelines for Ensuring Information Quality: Reopening of Comment Period

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Reopening of comment period.

SUMMARY: On May 3, 2002, the Nuclear Regulatory Commission (NRC) published in the **Federal Register** (67 FR 22463) its draft Information Quality (IQ) Guidelines for public comment. The comment period expired on May 30, 2002. During this comment period, the NRC received requests to extend the comment period. In view of the importance of the IQ Guidelines, the NRC is reopening the comment period until 5:00 p.m. on June 26, 2002.

DATES: The comment period has been reopened and now expires at 5:00 p.m. on June 26, 2002. Comments received after this date and time will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date and time.

ADDRESSES: The NRC recommends that comment be submitted by e-mail, web site, or fax due to the strict time schedule indicated, but mail and delivery are acceptable if received before the date and time noted. Submit comments to Information Quality, c/o Vicki Yanez, Web, Publishing, and Distribution Services Division, Office of the Chief Information Officer, Mail Stop: T6-E7, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, e-mail to infoquality@nrc.gov, or faxed to 301-415-5272. Comments may also be submitted at the NRC web site information quality comment form that is accessible from NRC's "Contact Us" Web page (<http://www.nrc.gov/public-involve/doc-comment/info-quality/feedback-form.html>). Comments may be delivered to Vicki Yanez, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays and until 5 p.m. on June 26, 2002.

FOR FURTHER INFORMATION CONTACT:

Vicki Yanez, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone 301-415-6844 or by Internet electronic mail at infoquality@nrc.gov.

Dated at Rockville, Maryland, this 4th day of June 2002.

For the Nuclear Regulatory Commission.

Jacqueline Silber,

Deputy Chief Information Officer, Office of the Chief Information Officer.

[FR Doc. 02-14537 Filed 6-7-02; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF MANAGEMENT AND BUDGET

Performance Measurement Advisory Council

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of Federal Advisory Committee meeting.

Open Meeting Notice: The Performance Measurement Advisory Council ("PMAC") will meet on Thursday, June 27, 2002 from 8:30 a.m. to 2 p.m. Eastern Time. Location for the meeting will be the Eisenhower Room of the White House Conference Center, 726 Jackson Place, Washington, DC. The meeting is open to the public and written statements may be filed with the advisory committee. It is recommended that members of the public wishing to attend bring photo identification. Due to limited availability of seating, members of the public will be admitted on a first-come, first-served basis.

The purpose of the meeting is to provide independent expert advice and recommendations to the Office of Management and Budget regarding measures of program performance and the use of such measures in making management and budget decisions. The agenda and topics to be discussed include welcoming and introducing members of the Council and providing an overview of the processes and means utilized to assess the effectiveness of Federal programs and initiatives. An agenda may be obtained prior to the meeting at <http://www.whitehouse.gov/omb/mgmt-gpra/index.html>. Additional information, including information for members of the public with disabilities, may be obtained by calling Mr. Thomas M. Reilly, PMAC Designated Federal Officer, (202) 395-4926.

Dated: June 6, 2002.

Thomas M. Reilly,

PMAC Designated Federal Officer.

[FR Doc. 02-14639 Filed 6-7-02; 8:45 am]

BILLING CODE 3110-01-P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available

From:
Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17a-11, SEC File No. 270-94, OMB Control No. 3235-0085.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 17a-11 (17 CFR 240.17a-11) requires broker-dealers to give notice when certain specified events occur. Specifically, the rule requires a broker-dealer to give notice of a net capital deficiency on the same day that the net capital deficiency is discovered or a broker-dealer is informed by its designated examining authority or the Commission that it is, or has been, in violation of its minimum requirement under Rule 15c3-1 (17 CFR 240.15c3-1) of the Securities Exchange Act of 1934 ("Exchange Act"). Under Rule 17a-11 an over-the-counter ("OTC") derivatives dealers must also provide notice to the Commission when a net capital deficiency is discovered but need not give notice to any SRO because OTC derivatives dealers are only required to register with the Commission.

Rule 17a-11 also requires a broker-dealer to send notice promptly (within 24 hours) after the broker-dealer's aggregate indebtedness is in excess of 1,200 percent of its net capital, its net capital is less than 5 percent of aggregate debit items, or its total net capital is less than 120 percent of its required minimum net capital. In addition, a broker-dealer must give notice if it fails to make and keep current books and records required by Rule 17a-3 (17 CFR 240.17a-3), if any material inadequacy is discovered as defined in Rule 17a-5(g) (17 CFR 240.17a-5(g)), and if back testing exceptions are identified pursuant to Appendix F of Rule 15c3-1 (17 CFR 15c3-1f) for a broker-dealer registered as an OTC derivatives dealer.

The notice required by the rule alerts the Commission, self-regulatory organizations ("SROs"), and the Commodity Futures Trading Commission ("CFTC") if the broker-dealer is registered as a futures

commission merchant, which have oversight responsibility over broker-dealers, to those firms having financial or operational problems.

Because broker-dealers are required to file pursuant to Rule 17a-11 only when certain specified events occur, it is difficult to develop a meaningful figure for the cost of compliance with Rule 17a-11. In 2001, the Commission received 692 notices under this rule from 627 broker-dealers. Each broker-dealer reporting pursuant to Rule 17a-11 will spend approximately one hour preparing and transmitting the notice as required by the rule. Accordingly, the total estimated annualized burden for 2001 was 692 hours. With respect to those broker-dealers that must give notice under Rule 17a-11, the Commission staff estimates that the approximate administrative cost, consisting mostly of accountant clerical work, to broker-dealers would be \$24.53 per hour (based on the Securities Industry Association salary survey and including 35% in overhead costs). Therefore, based on approximately one hour per notice and a total of 692 notices filed, the total annual expense for the reporting broker-dealers in 2001 was approximately \$16,975.

Broker-dealers providing notice and reports under Rule 17a-11 are required to preserve such records under Rule 17a-4 (17 CFR 240.17a-4) for a period of not less than three years, the first two years in an accessible place. Compliance with the Rule is mandatory. The Commission will generally not publish or make available to any person notice or reports received pursuant to Rule 17a-11. The Commission believes that information obtained under Rule 17a-11 relates to a condition report prepared for the use of the Commission, other federal governmental authorities, and securities industry self-regulatory organizations responsible for the regulation or supervision of financial institutions.

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

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC

20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 3, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-14524 Filed 6-7-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-2116]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the Pacific Exchange, Inc. (Armstrong Holdings, Inc., Common Stock, \$1.00 par value)

June 5, 2002.

Armstrong Holdings, Inc., a Pennsylvania corporation, ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 12d2-2(d) thereunder,² to withdraw its Common Stock, \$1.00 par value ("Security"), from listing and registration on the Pacific Exchange, Inc. ("PCX" or "Exchange").

The Board of Directors ("Board") of the Issuer approved a resolution on February 25, 2002 to withdraw its Security from listing on the Exchange. The Board determined that its interest and those of its shareholders no longer require listing of the Security on the PCX. The Issuer will continue to list its Security on the New York Stock Exchange, Inc. ("NYSE").

The Issuer stated in its application that it has complied with the rules of the PCX that govern the removal of securities from listing and registration on the Exchange. The Issuer's application relates solely to the withdrawal of the Security from listing on the PCX and shall have no effect upon the Security's continued listing on the NYSE and registration under Section 12(b) of the Act.³

Any interested person may, on or before June 25, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information

submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Jonathan G. Katz,

Secretary.

[FR Doc. 02-14525 Filed 6-7-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46015/May 31, 2002]

Order Granting Temporary Exemption of Broker-Dealers that are Futures Commission Merchants from the Disclosure Requirements of Rule 10b-10 Promulgated under the Securities Exchange Act of 1934 and the Disclosure Requirements of Section 11(d)(2) of the Securities Exchange Act of 1934 in Connection with Security Futures Transactions Effected in Futures Accounts

The Commodity Futures Modernization Act of 2000 ("CFMA") permits the trading of securities futures, *i.e.*, futures contracts on individual securities and on narrow-based security indexes ("security futures").¹ The CFMA regulates security futures both as "securities" under the federal securities laws,² and as futures contracts for purposes of the Commodity Exchange Act ("CEA").³ As a result, the Securities and Exchange Commission ("Commission") and the Commodity Futures Trading Commission ("CFTC") have joint jurisdiction over security futures products ("SFPs").

The CFMA also amended the CEA and the Securities Exchange Act of 1934 ("Exchange Act") to require that the CFTC and the SEC provide notice registration procedures for trading facilities and intermediaries that are

already registered with either the Commission or the CFTC to register with the other agency on an expedited basis for the limited purpose of trading security futures products.⁴ Section 15(b)(11)(A) of the Exchange Act permits futures commission merchants and introducing brokers that are registered with the CFTC to register with the Commission as broker-dealers for the limited purpose of effecting transactions in certain security futures products by filing a written notice that is effective upon filing ("Notice BDs").⁵ Similarly, Section 4f(a)(2) of the CEA (7 U.S.C. 6f(a)(2)) permits a broker-dealer registered with the Commission to register with the CFTC for the limited purpose of effecting transactions in certain security futures products by filing a written notice that is immediately effective ("Notice FCMs").

Further, the CFMA amended the CEA and the Exchange Act to exempt Notice BDs⁶ from certain provisions of the Exchange Act and Notice FCMs⁷ from certain provisions of the CEA (including CFTC segregation requirements),⁸ so that they would not be subject to conflicting or duplicative regulation. Firms that are fully-registered with both the CFTC and the Commission (Full CFM/Full BDs) do not have these exemptions. Instead, under the CFMA, the CFTC and the Commission are required to consult with each other and issue such rules, regulations, or orders as are necessary to avoid certain duplicative or conflicting regulations applicable to such Full FCM/Full BDs.

The CFMA, however, did not exempt Notice BDs from Exchange Act Section 10⁹ and the rules promulgated under that section. In addition, as stated previously, the CFMA did not exempt Full FCM/Full BDs from any provisions of the Exchange Act or the rules promulgated thereunder. Accordingly, under the CFMA, both Notice BDs and Full FCM/Full BDs effecting SFP transactions in futures accounts currently are required to meet the

⁴ 17 CFR 200.30-3(a)(1).

¹ Pub. L. 106-554, 114 Stat. 2763. Under Section 3(a)(55)(A) of the Securities Exchange Act of 1934 ("Exchange Act"), the term "security future" is defined as a contract of sale for future delivery of a single security or of a narrow-based security index. 15 U.S.C. 78c(a)(55)(A). Under Exchange Act Section 3(a)(56), the term "security futures product" is defined as a security future or an option on a security future. 15 U.S.C. 78c(a)(56).

² See, e.g., Exchange Act Section 3(a)(10), 15 U.S.C. 78c(a)(10).

³ The term "security future" is defined in CEA Section 1a(31) (7 U.S.C. 1a(31)) as a contract of sale for future delivery of a single security or of a narrow-based security index. Under CEA Section 1a(33) (7 U.S.C. 1a(33)), the term "security futures product" is defined as a security future or an option on a security future.

⁴ Section 4f(a)(2) of the CEA (7 U.S.C. 6f(a)(2)) and rules adopted by the CFTC (*see* 66 FR 43080 (August 17, 2001)), and Section 15(b)(11)(A)(i) of the Exchange Act (15 U.S.C. 78o(b)(11)(A)(i)) and the rules adopted by the SEC (*see* Exchange Act Release No. 44730 (August 21, 2001), 66 FR 45137 (August 27, 2001)).

⁵ 15 U.S.C. 78o(b)(11)(A).

⁶ An FCM registered with the SEC pursuant to Section 15(b)(11)(A)(i) of the Exchange Act (15 U.S.C. 78o(b)(11)(A)(i)) and the rules adopted by the SEC (*see* Exchange Act Release No. 44730 (August 21, 2001), 66 FR 45137 (August 27, 2001)).

⁷ A broker-dealer registered with the CFTC pursuant to Section 4f(a)(2) of the CEA (7 U.S.C. 6f(a)(2)) and rules adopted by the CFTC (*see* 66 FR 43080 (August 17, 2001)).

⁸ CEA section 4f(a)(4)(A) (7 U.S.C. 6f(a)(4)(A)).

⁹ 15 U.S.C. 78j.

¹ 15 U.S.C. 781(d).

² 17 CFR 240.12d2-2(d).

³ 15 U.S.C. 781(b).

disclosure requirements of both the CEA and the Exchange Act and the rules thereunder. In particular, Notice BDs and Full FCM/Full BDs are required to meet the disclosure requirements of Exchange Act Rule 10b-10¹⁰ and CEA Rule 1.33(b).¹¹ Also, unlike Notice BDs, Full FCM/Full BDs, are not automatically exempt from Exchange Act Section 11.¹² Accordingly, Full FCM/Full BDs are subject to the disclosure requirements of Exchange Act Section 11(d)(2).¹³

In an effort to avoid duplicative and conflicting regulation, the Commission has proposed amendments to Exchange Act Rule 10b-10¹⁴ that, if adopted, would alter the disclosure requirements for Notice BDs and Full FCM/Full BDs effecting SFP transactions in customers' futures accounts. Similarly, the Commission has proposed Rule 11d2-1 that will grant an exemption from Exchange Act Section 11(d)(2)¹⁵ for Full FCM/Full BDs effecting SFP transactions in customers' futures accounts. These proposed amendments and the proposed rule are designed to provide the least amount of disruption to the confirmation systems Notice BDs and Full FCM/Full BDs use when providing confirmations of transactions in customers' futures accounts while, at the same time, providing customers with adequate information about the SFP transactions effected in their futures accounts.

The proposed amendments and the proposed new rule, however, may not be acted on by the Commission at the time trading in SFPs begins. Therefore, the Commission, through this order, is providing a period of exemption from Exchange Act Rule 10b-10¹⁶ for Notice BDs and Full FCM/Full BDs effecting SFP transactions in customers' futures accounts and a period of exemption from Exchange Act Section 11(d)(2)¹⁷ for FCM/Full BDs effecting SFP

transactions in customers' futures accounts.

This exemptive period will allow the Commission to receive and consider comments and adopt appropriate amendments and rules while, at the same time, preventing any possible application of duplicative and conflicting regulation by the Commission or the CFTC regarding confirmations of SFP transactions effected in customers' futures accounts. In the absence of an exemptive period, the Commission believes that many Notice BDs and Full FCM/Full BDs would be precluded from commencing trading in SFPs only because their confirmation systems would be unable to process confirmations in accordance with the full disclosure requirements of Exchange Act Rule 10b-10.¹⁸ We believe the absence of many potential market participants at this critical time could affect the liquidity, and perhaps even the viability, of this new market. The Commission, therefore, finds that it is in the public interest to assure that all potential market participants are able to participate at the start of this new market. Accordingly, the Commission believes that it is consistent with the public interest and the protection of investors to provide this temporary exemptive relief.

Accordingly, pursuant to Section 36(a)(1) of the Exchange Act,¹⁹

It is hereby ordered that Notice BDs and Full FCM/Full BDs are exempted from the requirements of Exchange Act Rule 10b-10²⁰ and Full FCM/Full BDs are exempted from the requirements of Exchange Act Section 11(d)(2)²¹ with respect to any SFP transaction effected in a customer's futures account until amendments to Exchange Act Rule 10b-10 and a new Rule 11d2-1 become effective.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02-14295 Filed 6-7-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46021; File No. SR-Amex-2002-40]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendments No. 1 and No. 2 thereto by the American Stock Exchange LLC Relating to the Listing and Trading of Notes Based on the Select European 50 Index

June 3, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 24, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On May 6, 2002, the Amex submitted Amendment No. 1 to the proposed rule change.³ On May 31, 2002, the Amex submitted Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to approve for listing and trading notes, the return on which is based upon the performance of the Dow Jones EURO STOXX 50 Return Index in U.S. dollars (the "U.S. Dollar DJ EURO STOXX 50 Index"), as reduced by an adjustment factor as described below (the "Select European 50 Index" or "Index").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 3, 2002. Amendment No. 1 replaced the original proposal in its entirety and clarified certain descriptive language used in the original proposal.

⁴ See letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated May 30, 2002. In Amendment No. 2, the Amex further modified the proposed rule change by adding language clarifying the calculation of the Dow Jones EURO STOXX 50 Index.

¹⁰ 17 CFR 240.10b-10.

¹¹ 17 CFR 1.33(b). Specifically, CEA Rule 1.33(b)(1) requires FCMs that effect futures transactions for customers to provide, no later than the next business day after the transaction, "a written confirmation of each commodity futures transaction caused to be executed by it * * *."

¹² 15 U.S.C. 78k.

¹³ 15 U.S.C. 78k(d)(2). Exchange Act Section 11(d)(2) generally prohibits a broker-dealer from effecting any securities transaction with a customer unless "he discloses to such customer in writing at or before the completion of the transaction whether he is acting as a dealer for his own account, as a broker for such customer, or as a broker for some other person."

¹⁴ 17 CFR 240.10b-10.

¹⁵ 15 U.S.C. 78k(d)(2).

¹⁶ 17 CFR 240.10b-10.

¹⁷ 15 U.S.C. 78k(d)(2).

¹⁸ 17 CFR 240.10b-10.

¹⁹ 15 U.S.C. 78mm(a)(1).

²⁰ 17 CFR 240.10b-10.

²¹ 15 U.S.C. 78k(d)(2).

the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Section 107A of the Amex Company Guide ("Company Guide"), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.⁵ The Amex proposes to list for trading under Section 107A of the Company Guide notes based on the Select European 50 Index (the "Notes"). The Index will be calculated and published by the Amex.

The Notes will conform to the initial listing guidelines under Section 107A⁶ and continued listing guidelines under Sections 1001–1003⁷ of the Company Guide. The Notes are senior non-convertible debt securities of Merrill Lynch & Co., Inc. ("Merrill Lynch"). The Notes will have a term of not less than one, no more than ten years. The Notes

⁵ See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. Amex-89-29) ("Hybrid Approval Order").

⁶ The initial listing standards for the Notes require: (1) A minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least \$4 million; and (4) a term of at least one year. In addition, the listing guidelines provide that the issuer have assets in excess of \$100 million, stockholder's equity of at least \$10 million, and pretax income of at least \$750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) Assets in excess of \$200 million and stockholders' equity of at least \$10 million; or (2) assets in excess of \$100 million and stockholders' equity of at least \$20 million.

⁷ The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than \$400,000.

will entitle the owner at maturity to receive an amount based upon the percentage change between the "Starting Index Value" and the "Ending Index Value" (the "Redemption Amount"). The "Starting Index Value" is the value of the Index on the date the issuer prices the Notes for the initial sale to the public. The "Ending Index Value" is the value of the Index over a period shortly prior to the expiration of the Notes. The Ending Index Value will be used in calculating the amount investors will receive upon maturity. The Notes will not have a minimum principal amount that will be repaid and, accordingly, payments on the Notes prior to, or at maturity, may be less than the original issue price of the Notes. During a two-week period in the designated month each year, investors will have the right to require the issuer to repurchase the Notes at a redemption amount based on the value of the Index at such repurchase date.

The Notes are cash-settled in U.S. dollars and may not be called by the issuer. The holder of a Note does not have any right to receive any of the underlying securities comprising the U.S. Dollar DJ EURO STOXX 50 Return Index or any other ownership right or interest in the Select European 50 Index. The Notes are designed for investors who want to participate or gain exposure to the stock market performance of highly-capitalized European companies and who are willing to forgo market interest payments on the Notes during such term. The Select European 50 Index will initially be set to provide a benchmark value of 100.00 at the close of trading on the date the Notes are priced for initial sale to the public.

The value of the Select European 50 Index at any time will equal: (1) The value of the U.S. Dollar DJ EURO STOXX 50 Return Index, less (2) a pro rata portion of the annual index adjustment factor,⁸ divided by (3) the index divisor used to establish a benchmark Index value of 100.00 at the close of trading on the date the Notes are priced for initial sale to the public. The Select European 50 Index will reflect payment of dividends, if any, on the underlying securities comprising the Index. The U.S. Dollar DJ EURO STOXX

⁸ Each day, the Select European 50 Index will be reduced by a pro rata portion of the annual index adjustment factor, expected to be 1.5% (*i.e.* 1.5%/365 days = 0.0041% daily). This reduction to the value of the Select European 50 Index will reduce the total return to investors upon exchange or at maturity. The Amex represents that an explanation of this deduction will be included in any marketing materials, fact sheets, or any other materials circulated to investors regarding the trading of this product.

50 Return Index⁹ measures the total return of the Dow Jones EURO STOXX 50,¹⁰ in U.S. dollars. Both indices are calculated by STOXX Ltd. ("STOXX"), a joint venture between Deutsche Börse AG, Dow Jones & Company ("Dow Jones"), Euronext Paris SA and the SWX Swiss Exchange. The U.S. Dollar DJ EURO STOXX 50 Return Index differs from the Dow Jones EURO STOXX 50 only in that (1) it reflects the reinvestment of dividends paid on the stocks underlying the index (subject to the withholding taxation laws of the various European countries applicable to those dividends) and (2) it is converted to U.S. dollar from Euros based on the exchange rate at 8:15 p.m. Central European Time.

The Commission has previously approved the listing and trading of securities linked to the value of the Dow Jones EURO STOXX 50 Index.¹¹ BRIDGES linked to the performance of the EURO STOXX 50 Index were issued by Morgan Stanley & Co., Inc., and are currently listed and traded on the New York Stock Exchange, Inc. ("NYSE"). The Dow Jones EURO STOXX 50 Index was constructed by STOXX to have an initial value of 1000 on December 31, 1991 and is designed to measure the stock market performance of highly-capitalized companies of countries that were expected to participate in the European Economic and Monetary Union (the "EMU"). The Dow Jones EURO STOXX 50 Index currently represents the performance of 50 companies representing the market sector leaders in Austria, Belgium, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal and Spain. The index is calculated and disseminated on a real time basis every 15 seconds and is published daily in *The Wall Street Journal*.

The Dow Jones EURO STOXX 50 Index consists of the common stocks of companies that are leaders in their

⁹ The prices of the securities underlying the U.S. Dollar DJ EURO STOXX 50 Return Index are quoted in Euros. Therefore, investments in notes linked to the value of non-U.S. securities may involve greater risks, subject to fluctuations of foreign currency exchange rates, future foreign political and economic developments, and the possible imposition of exchange controls or other foreign governmental laws or restrictions applicable to such investments.

¹⁰ The Dow Jones EURO STOXX 50 Index is a capitalization-weighted index of 50 European blue-chip stocks from countries participating in the EMU that is quoted and priced in Euros. The Index developed with a base value of 1000 as of December 31, 1991.

¹¹ See Securities Exchange Act Release No. 40303 (August 4, 1998), 63 FR 42892 (August 11, 1998) (approving BRoad InDex Guarded Equity-linked Securities ("BRIDGES") linked to the value of the Dow Jones EURO STOXX 50 Index).

industry sectors and are among the most liquid and highly-capitalized companies in the EMU. Each component company is a major factor in its industry and its securities are widely held by individuals and institutional investors. The Exchange represents that each of the components of the Dow Jones EURO STOXX 50 Index is an entity registered pursuant to section 12 of the Act.¹²

The Exchange believes that adequate surveillance exists for the component stocks of the Dow Jones EURO STOXX 50 Index as a result of "Surveillance Sharing Arrangements" with appropriate entities in the component stocks' home countries. Surveillance Information Sharing Arrangements include surveillance information-sharing agreements that the Exchange has entered into with foreign markets, memoranda of understanding that the SEC had entered into with foreign securities regulatory agencies and similar agreements and arrangements between the United States and the SEC and their counterparts in the home countries for the companies whose securities are components of the Dow Jones EURO STOXX 50 Index. At present, in excess of 90% of the capitalization of the Dow Jones EURO STOXX 50 is subject to Surveillance Information Sharing Arrangements.

The Exchange will not list a new issue of Notes linked to the Select European 50 Index if either: (i) The home countries of the component securities representing more than 50% of the capitalization of the Index are not subject to Surveillance Information Sharing Arrangements; (ii) a home country of the component securities representing more than 20% of the capitalization of the Index is not subject to Surveillance Information Sharing Arrangements; or (iii) two (2) home countries of component securities representing more than 33 1/3 percent of the capitalization of the Index are not subject to Surveillance Information Sharing Arrangements.

Companies are selected for inclusion in the calculation of the Dow Jones EURO STOXX 50 Index by STOXX. The companies that are included in the Dow Jones EURO STOXX 50 Index are representative of the broad market in the EMU and of a wide array of European industries including the following: automobile; food and beverage; banking; industrial; chemical; insurance conglomerates; media; consumer goods; cyclical; pharmaceutical; non-cyclical;

¹² Telephone conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, Florence Harmon, Senior Special Counsel, and Geoffrey Pemble, Attorney, Division, Commission (May 30, 2002).

retail; construction; technology; energy; telecommunications; financial services and utility. The Supervisory Board of STOXX is responsible for adding and deleting companies from the Dow Jones EURO STOXX 50.

STOXX reviews the Dow Jones EURO STOXX 50 Index annually, and accordingly, will add or delete stocks pursuant to its review procedures.

The number of shares outstanding and the share price for each class of stock are used to determine each component company's market capitalization. No company is permitted to comprise more than 10 percent of the value of the Index. If any company exceeds 10 percent of the value of the index, STOXX will cap that company's representation in the index at 10 percent and adjust the relative representation of the remaining component stocks so that they represent 90 percent. In order to avoid distortions, changes in the index for dividends, stock splits, rights offerings, spin-offs, repurchases and the like are made on a quarterly basis, unless the number of outstanding shares of a component company changes by more than 10 percent, in which case the adjustment is made immediately.

As of May 1, 2002, the market capitalization of the 50 companies that currently represent the Dow Jones EURO STOXX 50 Index ranged from a high of \$115.32 billion (Royal Dutch Petroleum) to a low of \$13.40 billion (Air Liquide). In addition, the market prices of the common stock of companies comprising the Index ranged from a high of \$257.77 (Muenchener Rueckver AG) to a low of \$4.57 (Unicredito Italiano SPA).¹³ The ten companies with the highest weighting in the Dow Jones EURO STOXX 50 Index represented 40.66 percent of the Index while the ten companies with the smallest weighting represented 7.57 percent of the Index.

As of May 1, 2002, the seven (7) countries that are represented in the Dow Jones Euro Stoxx 50 Index account for the following percentages: (1) Belgium, 1.78%; (2) Finland, 5.06%; (3) France, 31.74%; (4) Germany, 22.21%; (5) Italy, 9.22%; (6) Netherlands, 19.73%; (7) Spain, 10.25%.

The US Dollar DJ EURO STOXX 50 Return Index is updated once daily after 8:15 p.m. Central European time. The prior days' US Dollar DJ EURO STOXX 50 Return Index value will be used in the calculation of the Select European 50 Index until the new value is published. The Exchange will calculate the Select European 50 Index and, similar to other stock index values

¹³ These values are as of April 17, 2002.

published by the Exchange, the value of the Index will be calculated continuously and disseminated over the Consolidated Tape Association's Network B.

Because the Notes are linked to an equity index, the Amex's existing equity floor trading rules will apply to the trading of the Notes. First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes.¹⁴ Second, the Notes will be subject to the equity margin rules of the Exchange.¹⁵ Third, in conjunction with the Amex's Hybrid Approval Order, the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction. In addition, Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Amex will rely on its existing surveillance procedures governing equities, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy which prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act,¹⁶ in general, and furthers the objectives of section 6(b)(5) of the Act,¹⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to

¹⁴ Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

¹⁵ See Amex Rule 462 and Section 107B of the Company Guide.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2002-40 and should be submitted by July 1, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that implementation of the proposed rule change is consistent with the requirements of section 6 of the Act¹⁸ and the rules and regulations thereunder applicable to a national securities exchange.¹⁹ Specifically, the Commission believes that the proposal is consistent with section 6(b)(5) of the

Act.²⁰ The Commission believes that the availability of the Notes will provide an instrument for investors to achieve desired investment objectives through the purchase of an exchange-traded debt product linked to the Select European 50 Index. These objectives include participating in or gaining exposure to the Index while limiting somewhat downside risk. However, the Commission notes that the Notes are index-linked debt securities whose value in whole or in part will be based upon the performance of the Select European 50 Index. In addition, the Notes are non-principal protected: they do not have a minimum principal amount that will be repaid, and payments on the Notes at maturity may be less than their original issue price. For the reasons discussed below, the Commission has concluded that the Amex listing standards applicable to the Notes are consistent with the Act.

The Notes are non-convertible and will conform to the Amex initial listing guidelines under Section 107A of the Company Guide and continued listing guidelines under Sections 1001-1003 of the Company Guide. The specific maturity date will not be established until the time of the offering, but will be not less than one, nor more than ten years from the date of issue. The Notes will entitle the owner at maturity to receive an amount based upon the percentage change between the Starting Index Value (the value of the Index on the date the issuer prices the Notes for the initial sale to the public) and the Ending Index Value (the value of the Index over a period shortly prior to the expiration of the Notes). The Ending Index Value will be used in calculating the amount investors will receive upon maturity. The Notes will not have a minimum principal amount that will be repaid and, accordingly, payments on the Notes prior to, or at maturity, may be less than the original issue price of the Notes. During a two week period in the designated month each year, investors will have the right to require the issuer to repurchase the Notes at a redemption amount based on the value of the Index at such repurchase date. The Notes are cash-settled in U.S. dollars and may not be called by the issuer. The Select European 50 Index will initially be set to provide a benchmark value of 100.00 at the close of trading on the date the Notes are priced for initial sale to the public.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will

be applicable to the Notes. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the Notes. The Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes to: (1) Determine that such transaction is suitable for the customer, and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics, and bear the financial risks, of such transaction.

In addition, the Amex equity margin rules and debt trading rules will apply to the Notes. The Commission believes that the application of these rules should strengthen the integrity of the Notes. The Commission also believes that the Amex has appropriate surveillance procedures in place to detect and deter potential manipulation for similar index-linked products. By applying these procedures to the Notes, the Commission believes that the potential for manipulation of the Notes is minimal, thereby protecting investors and the public interest. The Commission further notes that the underlying Index on which the Select European 50 Index is based (the Dow Jones EURO STOXX 50 Return Index), is calculated by STOXX, a joint venture between Deutsche Börse AG, Dow Jones, Euronext Paris SA and the SWX Swiss Exchange, an entity independent of both the Exchange and the Issuer, and thus, a factor which the Commission believes should act to minimize the possibility of manipulation. The Dow Jones EURO STOXX 50 Index is calculated and disseminated every 15 seconds to market information vendors, and is converted to U.S. dollar from Euros based on the exchange rate daily at 8:15 p.m. Central European Time.

The Commission also notes that the Amex will issue a circular on the Notes. The circular should include, among other things, a discussion of the risks that may be associated with the Notes in addition to details on the composition of the Index and how the rates of return will be computed. Further, pursuant to Exchange Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes. Based on these factors, the Commission finds that the proposal to trade the Notes is consistent with section 6(b)(5) of the Act.²¹

¹⁸ 15 U.S.C. 78f.

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ *Id.*

²¹ 15 U.S.C. 78f(b)(5).

Amex has requested that the Commission find good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to several other instruments currently traded on the Amex. In determining to grant the accelerated approval for good cause, the Commission notes that the underlying Index on which the Select European 50 Index is based (the Dow Jones EURO STOXX 50 Return Index) is a portfolio of highly capitalized and actively traded securities similar to component securities in hybrid securities products that have been approved by the Commission for U.S. exchange trading. Additionally, the Notes will be listed pursuant to existing hybrid security listing standards as described above. Based on the above, the Commission finds good cause to accelerate approval of the proposed rule change, as amended.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²² that the proposed rule change, as amended (SR-Amex-2002-40) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²³

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 02-14432 Filed 6-7-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46007; File No. SR-BSE-2001-08]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to Competing Specialists and the Execution of Directed Agency Orders

May 30, 2002.

I. Introduction

On December 21, 2001, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change

related to competing specialists and the execution of directed agency orders. On April 19, 2002, the Exchange submitted Amendment No. 1 to the proposed rule change.³ The proposed rule change, together with Amendment No. 1, was published for comment in the **Federal Register** on April 26, 2002.⁴ No comments were received on the proposal. This order approves the proposed rule change, including Amendment No. 1.

II. Description of the Proposal

The Exchange proposes to amend certain sections of its rules related to Competing Specialist Initiative Rules (see BSE Rules, Chapter XV, *Dealer Specialists*, Section 18, *Procedures for Competing Specialists*) to allow, under certain conditions, for the altering of priority of specialist/competing specialist principal quotations when orders are directed by a customer to another specialist/competing specialist.⁵ Specifically, the Exchange seeks to add an exception for orders directed to a specialist/competing specialist. The exception will allow the specialist/competing specialist who receives such an order to elect to execute the order for his own account at the same national best bid and offer ("NBBO") price or better than the quotation on the book, if the quotation on the book is for the account of another specialist/competing specialist, or to permit the directed order to execute against the prevailing specialist/competing specialist's quotation.⁶

Furthermore, the Exchange proposes to amend certain other paragraphs of Chapter XV, *Dealer Specialists*, Section 18, *Procedures for Competing Specialists*, in order to remain consistent. Namely, the Exchange proposes to amend Paragraph 6 to reflect that all specialist/competing specialists will be responsible for orders directed to him/her. Likewise, the exchange seeks to amend Paragraph 9 to reflect certain Boston Exchange

³ See letter from John A. Boese, Assistant Vice President, Legal and Regulatory, BSE, to Belinda Blaine, Associate Director, Division of Market Regulation, Commission, dated April 18, 2002 ("Amendment No. 1").

⁴ See Securities Exchange Act Release No. 45791 (April 19, 2002), 67 FR 20852.

⁵ Under this proposal, all non-directed and Intermarket Trading System ("ITS") orders will continue to be routed according to existing competing specialist rules.

⁶ Where an agency order resides on the book of a specialist/competing specialist and a specialist/competing specialist then receives an executable order routed to him/her, the subsequent agency orders may be price improved by the specialist/competing specialist receiving such order, or permitted to match the resident agency order at the limit price (without price improvement).

Automated Communication and Order Routing Network ("BEACON") system changes, which will update quotations more efficiently, removing the burden from the regular specialist.

III. Discussion

The Commission finds that the proposed rule change is consistent with the provisions of section 6(b) of the Act,⁷ in general, and section 6(b)(5) of the Act,⁸ in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

In today's BEACON system, an agency order is automatically routed to the specialist quote in accordance with price/time priority amongst competing specialists if such quote is at the NBBO. This will continue to be the case for all customer orders. However, this rule will now allow the specialist/competing specialist who receives such an order to elect to execute the order for his own account at the NBBO price or better than the quotation on the book, if the quotation is for the account of another specialist/competing specialist, or to permit the directed order to execute against the prevailing specialist/competing specialist's quotation.

Implementation of the proposed rule will enable the order to be routed to the designated specialist and will enable competing specialists to exercise greater control over more of their firm's orderflow and provide price improvement opportunities to their customers over existing specialist proprietary quotations. All ITS transactions and non-directed orders will continue to be routed according to price/time priority, and available for price improvement by exposure to the specialists/competing specialists.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-BSE-2001-08), as amended, is hereby approved.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ *Id.*

²² 15 U.S.C. 78s(b)(2).

²³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-14434 Filed 6-7-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46020; File No. SR-CBOE-2002-18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Chicago Board Options Exchange, Inc. Relating to its DPM Membership Ownership Requirement

June 3, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 19, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Rule 8.85(e) pertaining to the Designated Primary Market-Maker ("DPM") seat ownership requirement. The text of the proposed rule change appears below.

New text is in *italics*; deletions are in [brackets].

Chicago Board Options Exchange, Incorporated Rules

Rule 8.85(e) Requirement to Own Membership. Each DPM organization shall own at least one Exchange membership for each trading location in which the organization serves as a DPM, as determined by the MTS Committee. An Exchange membership shall include a transferable regular membership or a Chicago Board of Trade full membership that has effectively been exercised pursuant to Article Fifth(b) of the Certificate of Incorporation. [A DPM shall be deemed to satisfy this ownership requirement if the DPM or a senior principal of the DPM owns an

Exchange membership. No single] *The same* Exchange membership(s) may not be used to satisfy this ownership requirement for *different* [more than one] DPM organizations or *different trading locations operated by the same DPM organization*. Each DPM shall have until [February 21, 2002] *insert date 90 days from date of SEC approval* to satisfy this ownership requirement, *but each DPM organization must continually own at least one membership until that date.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 21, 2000, the Commission approved a CBOE rule filing adopting a DPM membership ownership requirement.³ This requirement is contained in Rule 8.85(e). Currently, it provides, among other things, that each DPM must own at least one Exchange membership. It also states that this requirement would be deemed satisfied if the senior principal of the DPM owned the required membership(s). Pursuant to the terms of the rule, DPMs were required to comply with Rule 8.85(e) by February 21, 2002. The Exchange now seeks to modify Rule 8.85(e) to make clear that the requirements of the Rule are applicable to each DPM trading location (as opposed to each DPM organization), and to eliminate the concept that a senior principal can own a membership in place of the DPM organization.

CBOE proposed the seat ownership requirement at roughly the same time it was seeking to convert the entire equity option trading floor to the DPM system. At that time, each CBOE DPM managed only one trading location (trading post) on the CBOE trading floor. Thus, at that time, each DPM trading location would have been subject to the seat ownership requirement. Further, because Rule

8.85(e) does not state that each DPM organization needs to own a membership, Rule 8.85(e) could arguably apply to each DPM trading location on the floor, since for many purposes (including the allocation of option classes) different DPM trading locations managed by the same DPM organization are treated as separate DPMs.⁴ Since that time, there has been a significant consolidation of DPM operations at CBOE resulting in several DPM organizations each operating multiple DPM trading locations on CBOE's floor.

CBOE believes it is more consistent with the Exchange's original intent to modify the rule to make clear that each DPM organization must own at least one Exchange membership for each trading location in which the organization acts as a DPM. Such a change is also consistent with the Exchange's original rationale for these requirements: to contribute toward assuring that DPMs have a long-term commitment to the Exchange given the important functions performed by DPMs and that DPMs are a pivotal component of the Exchange's marketplace.

With respect to the use of the term "trading location," generally, a trading location is meant to be a trading station on CBOE's floor. However, because certain spots on the trading floor are structured in a way that makes it difficult to distinguish the boundaries of a trading station, CBOE proposes that the Exchange's Modified Trading System Appointments Committee ("MTS Committee"),⁵ determine the number of trading locations in which a DPM organization serves as a DPM.

Lastly, in order to simplify the application and enforcement of the DPM membership ownership requirement, CBOE is proposing to eliminate the provision allowing a senior principal of a DPM to own a required membership instead of the DPM organization. As proposed, each DPM organization would be required to own any seats required to be owned under Rule 8.85(e).

2. Statutory Basis

The Exchange believes the proposed rule change will contribute toward assuring that DPMs have a long-term commitment to the Exchange. Accordingly, the Exchange believes the proposed rule change is consistent with

⁴ However, because of the ambiguity in Rule 8.85(e), CBOE has applied the Rule to DPM organizations and not DPM trading locations on the Exchange floor.

⁵ The MTS Committee is the Committee responsible for reviewing and ensuring compliance with Rule 8.85.

¹⁰ 17 CFR 200.30-2(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Act Release No. 43186 (August 21, 2000), 65 FR 51880 (August 25, 2000) (Order approving File No. SR-CBOE-99-37).

Section 6(b) of the Act,⁶ in general, and further the objectives of section 6(b)(5),⁷ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in

the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the File No. CBOE-2002-18 and should be submitted by July 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-14430 Filed 6-7-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45998; File No. SR-NASD-2001-66]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Relating to Display Requirements When Using Reserve Size in the Nasdaq National Market Execution System

May 29, 2002.

I. Introduction

On October 4, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change relating to display requirements when using reserve size in the Nasdaq National Market Execution System ("NNMS" or "SuperSOES"). On October 23, 2001 and October 29, 2001, NASD submitted Amendment Nos. 1 and 2 to the proposed rule change, respectively.³ The proposed rule change, as amended, was published for comment in the **Federal Register** on November 13, 2001.⁴ The Commission received 233 comment letters on the proposed rule change.⁵

¹ 17 CFR 200.30-3(a)(12).

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ See letters from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 23, 2001 ("Amendment No. 1"); and October 29, 2001 ("Amendment No. 2").

⁵ See Securities Exchange Act Release No. 45016 (November 5, 2001), 66 FR 56875 (November 13, 2001).

⁶ A list of the commenters appears in the Appendix.

In addition, Nasdaq submitted two letters in response to comments.⁶ This order approves the proposed rule change, as amended.

II. Description of Proposal

Under the NNMS, market makers are allowed to keep shares in reserve. Known as reserve size, shares kept in reserve are available for execution through SuperSOES, but are not shown to the marketplace.⁷ Currently, the SuperSOES rules prohibit the use of the system's reserve size functionality unless a market maker is displaying at least 1000 shares in its public quote. Nasdaq proposes to eliminate the 1000-share display requirement for using reserve size. Under the proposed rule change, market makers would be allowed to use NNMS' reserve size any time they displayed a quote of at least one round lot (100 shares). Nasdaq would continue its policy of allowing the use of reserve size even if a particular displayed quotation dropped below 100 shares based on partial, interim executions against that un-updated quote.

III. Summary of Comments

As noted above, the Commission received 233 comment letters regarding the proposed rule change.⁸ A large majority of the letters were submitted by registered representatives, but commenters also included broker-dealer and market making firms, private investors, and a professional association. Five commenters supported the proposal,⁹ while the remaining 228 commenters opposed the proposal.

IV. Discussion

After carefully considering all the comments, the Commission finds, for the reasons discussed below, that the proposed rule change is consistent with the Act and the rules and regulations applicable to the NASD.¹⁰ In particular, the Commission finds that the proposal

⁶ See letters from Thomas P. Moran, Associate General Counsel, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated March 8, 2002 ("Nasdaq Letter I") and April 17, 2002 ("Nasdaq Letter II").

⁷ Under NNMS's execution algorithm, the system executes against all publicly-displayed shares at the same price level before executing in time priority against reserve size at that same price.

⁸ See *supra* note 5.

⁹ See Davenport Letter, Levine Letter, Morgan Keegan Letter, Robertson Stephens Letter, and STA Letter.

¹⁰ In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

is consistent with the requirements of Sections 15A(b)(6) of the Act.¹¹

1. Transparency Issues

Four commenters who supported the proposed rule change noted that the purpose of the reserve size feature is to provide market makers with a tool to limit the negative market impact associated with public knowledge of large pending transactions.¹² They further noted that electronic communication networks ("ECNs") offer reserve size functionality but are not subject to the 1000-share minimum display requirement that currently applies on Nasdaq. In the words of one commenter, the current 1000-share minimum display requirement on Nasdaq "serves as an alert to other market participants to the existence of reserve size in the system," and thus "defeats the purpose of the reserve size functionality."¹³ By contrast, this commenter contended, market participants cannot easily infer the existence of reserve size from ECN quotations.¹⁴

One commenter added that market makers should be free to enter any displayed or reserve size that suits their trading intentions, and forcing them to display such a large minimum size is unfair.¹⁵ This commenter noted that while proponents of the 1,000 share minimum display size for reserve orders claim that it forces market makers to display larger size to the marketplace, the opposite is true. The commenter noted that this argument assumes that if you restrict a market maker from entering his full intent with a 100 share displayed size, then he will enter it with a 1,000 share displayed size instead. The commenter believed that this assumption ignores several more attractive options available to a market

maker in this situation, such as: "(1) Withhold[ing] his intention to trade from the marketplace entirely and wait[ing] until the order becomes marketable to execute it, (2) forgo[ing] the Nasdaq reserve feature and enter[ing] only the number of shares he wishes to display into the marketplace and then manually 'refresh[ing]' his quote each time the displayed portion is executed, or (3) enter[ing] his order into an approved display alternative ATS that is not subject to the 1,000 share restriction." According to the commenter, each of these alternatives legally defeats any purported benefits of the 1,000 share minimum rule, because each one also has a negative impact on market quality when compared to permitting the market maker use his reserve quote directly.

Other commenters argued that the ability of a market maker to conceal a large reserve size while displaying only 100 shares runs counter to the goal of market transparency¹⁶ and would

controversy price discovery.¹⁷ Specifically, several commenters expressed concern that investors would be unable to properly assess risk and reward, gauge the market's direction, and make informed decisions about how to invest with the reduced display size.¹⁸ At the same time, some added, the market maker will have the advantage of knowing the size of incoming orders.¹⁹

In response, Nasdaq offered several arguments in support of its view that, contrary to commenters' concerns, the proposal will not materially impact transparency in its market.²⁰ First, Nasdaq challenged the premise that the 1000-share minimum display requirement is a key component in encouraging the display of significant trading interest. A recent review of SuperSOES indicated that only 13.9 percent of market maker quotes large enough to use reserve size actually had a reserve share amount attached to them.²¹

Second, Nasdaq argued that transparency has more than one component, such as trade price and volume information. Nasdaq asserted that the speed and reliability of such information has dramatically improved, with SuperSOES providing instantaneous automatic executions and immediate dissemination of the resulting transaction information via the public tape.

Finally, Nasdaq argued that, because all displayed size at a given price level

Thompson Letter, Towne Letter, Vo Letter, Ward Letter, Washburn Letter, Watts Letter, Weckherlen Letter, West Letter, Wilson Letter, Yang Letter, Yang Letter, Z. Hepner Letter, Zemeck Letter, Zlatkovic Letter, and Zour Letter.

¹⁷ See Goldhair Letter, J. Weintraub Letter, M. Murphy Letter, Nierling Letter, and Weckherlen Letter.

¹⁸ See B. Hepner Letter, Bailyn Letter, Bouldin Letter, Ciemens Letter, Consenza Letter, Deligiannis Letter, Dhillon Letter, E. Shapiro Letter, Gaida Letter, Giannone Letter, Giaquinto Letter, Hite Letter, J. Hughes Letter, K. Schroeder Letter, Klein Letter, Kobin Letter, M. Murphy Letter, M. Schroeder Letter, Malizia Letter, Roldan Letter, Schreiber Letter, Schuldenfrei Letter, Sinclair Letter, Vo Letter, Watts Letter, and Weckherlen Letter, *see also* C. Shapiro Letter, (discussing the effect of "information asymmetry").

¹⁹ See Schreiber Letter, M. Schroeder Letter, and Washburn Letter.

²⁰ See Nasdaq Letter I.

²¹ In Nasdaq Letter I, Nasdaq provided data for Nasdaq market makers and exchanges trading Nasdaq stocks pursuant to unlisted trading privileges ("UTP exchanges"). According to Nasdaq, only 13.5 percent of market maker and UTP exchange quotes large enough to use reserve size actually had a reserve share amount attached to them. In a subsequent telephone conversation, Nasdaq provided data for just market maker quotes. Telephone conversation between Terri Evans, Assistant Director, Division, Commission, and Thomas P. Moran, Associate General Counsel, Nasdaq, on May 23, 2002.

¹¹ 15 U.S.C. 78o-3(b)(6). Section 15A(b)(6) requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

¹² See Davenport Letter, Morgan Keegan Letter, Robertson Stephens Letter, and STA Letter. As explained in the Robertson Stephens Letter, the potential negative impact results from the fact that public knowledge of unusual supply or demand in a particular security can cause other market participants to revise their displayed quotations to price levels that would be less favorable to the customer.

¹³ See Robertson Stephens Letter.

¹⁴ See Robertson Stephens Letter, *see also* Morgan Keegan Letter.

¹⁵ See Levine Letter.

¹⁶ See A. Wang Letter, Abelson Letter, Arberman Letter, Atreya Letter, B. Hepner Letter, B. Lee Letter, B. Williams Letter, Bailyn Letter, Balber Letter, Ball Letter, Bauer Letter, Block Letter, Bouldin Letter, Bradshaw Letter, Burgess Letter, C. Kim Letter, C. Shapiro Letter, Cammarata Letter, Catrina Letter, Chan Letter, Chesler Letter, Chinnock Letter, Ciemens Letter, Corl Letter, Consenza Letter, Cosic Letter, Crosby Letter, Crowell Letter, D. Cohen Letter, D.H. Kim Letter, Daulong Letter, Deligiannis Letter, Dershow Letter, Dhillon Letter, Diamond Letter, Diemar Letter, Dolnier Letter, Dondero Letter, Donitz Letter, Donnelly Letter, Dubin Letter, E. Goldstein Letter, E. Knight Letter, E. Shapiro Letter, El-Assad Letter, Erman Letter, Ettles Letter, F. Raffaele Letter, Falcone Letter, Federici Letter, Feeny Letter, Feinstein Letter, Flaherty Letter, Gaida Letter, Getz Letter, Giannone Letter, Giaquinto Letter, Giordano Letter, Goldhair Letter, Gormley Letter, Gosling Letter, Greeley Letter, Gregg Letter, Grill Letter, H. Liu Letter, Hansford Letter, Hassell Letter, Helfman Letter, Herrick Letter, Heyman Letter, Hinkel Letter, Hite Letter, Hodges Letter, Hong Letter, Hotchkiss Letter, Ingles Letter, Ingram Letter, Isaacson Letter, Ives Letter, Iwasa Letter, J. Choi Letter, J. Hughes Letter, J. Kirstein Letter, J. Raffaele Letter, J. Schmidt Letter, J. Weintraub Letter, J. Williams Letter, Jahng Letter, Jones Letter, K. Kirstein Letter, K. Murphy Letter, K. Schroeder Letter, K.Y. Lee Letter, Kaneti Letter, Keane Letter, Kerman Letter, King Letter, Klarreich Letter, Klaus Letter, Klein Letter, Kobin Letter, Kobin Letter, Kott Letter, Kovac Letter, Kropf Letter, Kushner Letter, L. Waxman Letter, LaBonar Letter, Lay Letter, Leung Letter, Linton Letter, Liu Letter, Lopez Letter, Lopin Letter, Lovett Letter, M. Murphy Letter, M. Schroeder Letter, Magat Letter, Majid Letter, Malizia Letter, Markasevic Letter, Masso Letter, Mikhelson Letter, Miller Letter, Miller Letter, Morant Letter, Morgan Letter, Namolik Letter, Nemcic Letter, Nicoletta Letter, Nierling Letter, No Letter, O'Malley Letter, Oahana Letter, Panayotov Letter, Parsons Letter, Petrov Letter, Piskun Letter, Poulton Letter, R. Murphy Letter, Ratto Letter, Rea Letter, Roth-McEnroe Letter, Rotter Letter, S. Hughes Letter, S. Kim Letter, S. Sherwood Letter, Salti Letter, Schreiber Letter, Schulberg Letter, Schuldenfrei Letter, Schultz Letter, Senna Letter, Sharon Letter, Shatkin Letter, Sherman Letter, Sinclair Letter, Skinner Letter, Sohn Letter, Song Letter, Squires Letter, Stengel Letter, Strum Letter, Stuzin Letter, Sukenick Letter, Talib Letter,

has priority in execution over reserve size at the same price, market participants desiring to trade immediately and in size have incentives to quickly display larger share amounts. In this context, Nasdaq cited statistics to show that the average display size of quotes today has increased 83 percent from the average display size immediately following decimalization and before SuperSOES was introduced. Nasdaq believes that these statistics show that market participants are more inclined to display larger size in the fast-moving SuperSOES environment.

The Commission believes that Nasdaq has adequately addressed the concerns raised by commenters. While the Commission recognizes that the proposed rule change appears to limit transparency by reducing the minimum number of shares that must be displayed before a market maker can use reserve size, the Commission agrees with the opinion of one commenter that market makers will not necessarily display 1000 shares just to use the reserve size feature in SuperSOES, in lieu of other options such as sending an order to an ECN. Even aside from the minimum display requirement, the Commission believes that market participants will still have an incentive to display greater size, because SuperSOES executes incoming orders against displayed size at the best price before accessing reserve size at the same price level. Therefore, it may be in a market participant's best interest to display greater size and receive an immediate execution. The Commission notes that Nasdaq has offered data that indicates that only a small portion of quotes large enough to potentially use reserve size, actually have a reserve share amount attached to them.

2. Liquidity Issues

One commenter who supported the proposed rule change believed that the current, 1000-share minimum display requirement inhibits liquidity.²² Rather than meet that requirement, this commenter argued, a market maker may choose to withhold his intention to trade from the marketplace entirely and wait until an order he is holding becomes marketable to execute it.²³

On the other hand, many commenters objected to the proposal on the grounds that it would negatively impact market liquidity.²⁴ Some of these commenters

expressed the view that the ability to display only 100 shares would allow market makers to limit the availability of stock at the inside market,²⁵ and provide little liquidity during a severe upturn or downturn.²⁶ These commenters appeared to believe that, under the proposal, when a market maker at the inside price is displaying only 100 shares while maintaining a large reserve size at that same price, the system would fill incoming orders at a rate of only 100 shares at a time. During the time lag that would result, the market maker would have time to withdraw most of the liquidity stored in his reserve size if this would be to his advantage, as it might be in volatile markets.²⁷

One commenter observed that in approving the original SuperSOES system and its reserve size feature, the Commission cited the justification set forth by Nasdaq that the 1000-share display requirement would increase liquidity by providing an incentive for market makers to display a larger quotation size.²⁸ "We are confounded," this commenter stated, "that the NASD would reverse its previous position and propose to pare back the reserve size requirement to a single round lot," particularly in view of "the substantial deterioration of displayed market liquidity in the post-decimals environment."²⁹

In response to liquidity concerns, Nasdaq insisted that nothing in the

Letter, D. Cohen Letter, D. H. Kim Letter, D'Aleo Letter, Deligiannis Letter, Diemar Letter, E. Goldstein Letter, El-Assad Letter, Erman Letter, F. Raffaele Letter, Feeney Letter, Getz Letter, Giaquinto Letter, Goldhair Letter, Greeley Letter, Gregg Letter, Grill Letter, H. Liu Letter, Hansford Letter, Hassell Letter, Hodges Letter, Hotchkiss Letter, Ingles Letter, Isaacson Letter, Iwasa Letter, J. Hughes Letter, J. Raffaele Letter, Jones Letter, K. Choi Letter, K. Kirstein Letter, Kaneti Letter, Klarreich Letter, Klaus Letter, Kobin Letter, LaBonar Letter, Landsman Letter, Lovett Letter, Lutz Letter, Magat Letter, Majid Letter, Masso Letter, McCabe Letter, Nicoletta Letter, Nierling Letter, O'Malley Letter, Oahana Letter, Orgen Letter, Parsons Letter, Petrov Letter, Plotkin Letter, Ratto Letter, Rebatta Letter, Schulberg Letter, Senna Letter, Sharon Letter, Shatkin Letter, Sherman Letter, Sinclair Letter, Sohn Letter, Squires Letter, Stancevic Letter, Stengel Letter, Stuzin Letter, Sullivan Letter, Weckherlen Letter, West Letter, Wilson Letter, Yang Letter, Zemeck Letter, and Zour Letter.

²⁵ See Cammarata Letter, Ciemens Letter, Isaacson Letter, J. Hughes Letter, Linton Letter, Lovett Letter, McCabe Letter, Song Letter, Stengel Letter, and Zucker Letter.

²⁶ See Giaquinto Letter.

²⁷ Many commenters explicitly stated their belief that the proposal would create market slowdowns due to multiple executions of displayed and refreshed 100-share lots at the inside price. See *more at infra* notes 32–37 and accompanying text.

²⁸ See Morgan Stanley Letter (citing Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3987 (January 25, 2000)).

²⁹ *Id.*

reduction of the display size requirement could be expected to remove liquidity from its market.³⁰ According to Nasdaq, even though a market participant may elect to apportion their total trading interest between displayed size and reserve size differently, the same number of shares remain immediately accessible through the system. In addition, Nasdaq believes that to the extent the proposal limits the negative impact associated with the required display of large share size, the total amount of shares entered into SuperSOES may increase and thereby increase overall liquidity on Nasdaq.³¹

The Commission understands the concerns raised by commenters. However, the Commission believes that the ability to use reserve size under the proposal may give market participants on Nasdaq greater flexibility in representing large orders. In particular, the proposed rule change may prove useful to market participants who wish to minimize the market impact of their orders. Increased participation should, in turn, enhance liquidity of the market, to the benefit of all market participants. In addition, the Commission notes that a reduction in the displayed amount of liquidity does not necessarily signify a reduction in the amount of actual liquidity accessible in a market. As clarified by Nasdaq, the same amount of shares will be immediately accessible through the system.

3. Impact on Executions and Potential for Abuse

Many commenters believed that orders sent to Nasdaq that today can be filled in one execution would require multiple executions to be filled under the proposed system,³² and that the

³⁰ See Nasdaq Letter I.

³¹ *Id.*

³² See A. Wang Letter, Abelson Letter, Atreya Letter, B. Lee Letter, B. Williams Letter, Bailyn Letter, Balber Letter, Bauer Letter, Ben-Aharon Letter, Benetti Letter, B. Raffaele Letter, Bouldin Letter, Brook Letter, C. Kim Letter, Cammarata Letter, Caputo Letter, Catrina Letter, Chan Letter, Chan Letter, Chaudry Letter, Chesler Letter, Chinnock Letter, Ciemens Letter, Corl Letter, Cosenza Letter, Cosic Letter, Crosby Letter, Crowell Letter, D.H. Kim Letter, D'Aleo Letter, Daulong Letter, Diamond Letter, Diemar Letter, Dondero Letter, Dubin Letter, E. Goldstein Letter, E. Knight Letter, El-Assad Letter, Erman Letter, F. Raffaele Letter, Falcone Letter, Feinstein Letter, Flaherty Letter, Gaida Letter, Getz Letter, Gormley Letter, Gregg Letter, Grill Letter, Gussin Letter, H. Liu Letter, Hansford Letter, Hassell Letter, Hayden Letter, Helfman Letter, Hite Letter, Hodges Letter, Hong Letter, Ingles Letter, Isaacson Letter, Ives Letter, J. Choi Letter, J. Goldstein Letter, J. Hughes Letter, J. Raffaele Letter, J. Weintraub Letter, J. Williams Letter, Jones Letter, K. Choi Letter, K. Kirstein Letter, K. Schroeder Letter, K.Y. Lee Letter, Kaneti Letter, Keane Letter, Kinzelberg Letter, Klaus Letter, Klein Letter, Kobin Letter, Kott Letter, Kropf Letter,

²² See Levine Letter.

²³ *Id.*

²⁴ See Abelson Letter, Arberman Letter, Atreya Letter, B. Hepner Letter, Bailyn Letter, Benetti Letter, Bouldin Letter, C. Kim Letter, C. Shapiro Letter, Cammarata Letter, Catrina Letter, Chan Letter, Ciemens Letter, Crosby Letter, Crowell

resulting time lag would slow down the entire market, unfairly advantage market makers, and lend to widespread abuse. Various commenters believed that the proposal would promote deception,³³ foster manipulative conduct,³⁴ facilitate monopoly pricing and collusion,³⁵ and result in inefficiency.³⁶

By way of example, many commenters noted that under the current system, when a market maker displays 1000 shares at the inside market—as required for use of the reserve size feature—an incoming order of up to 1000 shares is filled immediately against that displayed quotation, in one execution. Under the proposal, these commenters believe, because the same market maker would be required to display only 100 shares and could hold the remaining 900 shares in reserve size, each time 100 shares of an incoming order is filled, the system would need to refresh the displayed size again before the next 100 shares could be filled, causing the execution of a full 1000 shares to take ten times as long.³⁷

L. Waxman Letter, LaBonar Letter, Laughlin Letter, Lazarus Letter, Liu Letter, Lovett Letter, Lutz Letter, M. Schroeder Letter, M. Sherwood Letter, Magat Letter, Majid Letter, Malizia Letter, Markasevic Letter, Masso Letter, McCabe Letter, Miller Letter, Morant Letter, Morgan Letter, Nemcic Letter, No Letter, Oahana Letter, Panayotov Letter, Parsons Letter, Petrov Letter, Philip Letter, Plotkin Letter, R. Murphy Letter, Rea Letter, Rebatta Letter, Roldan Letter, Roth-McEnroe Letter, Rotter Letter, S. Hughes Letter, S. Kim Letter, S. Sherwood Letter, Salti Letter, Sc. Sullivan Letter, Schreiber Letter, Schulberg Letter, Schuldenfrei Letter, Schwartz Letter, Senna Letter, Sharon Letter, Shatkin Letter, Sherman Letter, Shorack Letter, Sinclair Letter, Sinreich Letter, Sohn Letter, Stancevic Letter, Stengel Letter, Strum Letter, Stuzin Letter, Talib Letter, Thompson Letter, Towne Letter, Voldarsky Letter, Ward Letter, Washburn Letter, Watts Letter, Williamson Letter, Yang Letter, Zemeck Letter, Zlatkovic Letter, Zour Letter, and Zucker Letter.

³³ See Cammarata Letter, D.H. Kim Letter, Deligiannis Letter, Gaida Letter, Garby Letter, Gregg Letter, Hansford Letter, Heyman Letter, Isaacson Letter, J. Williams Letter, Kernan Letter, Lazar Letter, Morgan Letter, R. Murphy Letter, Rebatta Letter, Squires Letter, and Stengel Letter.

³⁴ See Atreya Letter, Bailyn Letter, Benetti Letter, Burgess Letter, Crosby Letter, Crowell Letter, Dershow Letter, F. Raffaele Letter, Garby Letter, Goldhair Letter, Gregg Letter, Herrick Letter, Heyman Letter, J. Kirstein Letter, J. Raffaele Letter, Keane Letter, Lazar Letter, Linton Letter, Magat Letter, Masso Letter, Morgan Letter, Nierling Letter, Oshins Letter, Petrov Letter, Rea Letter, S. Kim Letter, Sherman Letter, Sinclair Letter, Stancevic Letter, Talib Letter, Watts Letter, and Wilson Letter. See also *infra* notes 27–30 and accompanying text.

³⁵ See C. Kim Letter, C. Shapiro Letter, and Crowell Letter.

³⁶ See Gaida Letter, Jones Letter, Kobin Letter, Kropf Letter, Landsman Letter, Linton Letter, and Weckherlen Letter.

³⁷ See Atreya Letter, C. Kim Letter, Chan Letter, Crowell Letter, F. Raffaele Letter, Gregg Letter, Hodges Letter, Ingram Letter, Ives Letter, J. Kirstein Letter, J. Raffaele Letter, J. Williams Letter, Jahng Letter, K. Kirstein Letter, Klaus Letter, L. Waxman Letter, Landsman Letter, Magat Letter, Oahana

Many commenters contended that the reduced display requirement would benefit market makers at the expense of investors, allowing them, for example, to slow down the movement of a stock while minimizing their own exposure.³⁸ In the view of these commenters, under the proposal, a market maker could display the minimum 100 shares at the inside market while entering a large number of shares in reserve size at the same price. If he then saw the market shift direction, he could withdraw the liquidity in his reserve size and move it to a higher price level before investors could reach it, because the multiple executions of incoming orders at the inside price at a rate of only 100 shares at a time would give him the time to do so. In the words of many commenters, the proposal would thus effectively “eliminate liability orders.”³⁹

Commenters also variously argued that market makers would artificially stall the momentum of a stock so they could “back away” from liability for their reserve size;⁴⁰ misrepresent true supply and demand;⁴¹ and interfere with the natural direction of the market.⁴² Among the other abuses commenters feared were: a market maker holding up the price of a downward moving stock in order to

Letter, Panayotov Letter, Petrov Letter, Philip Letter, Plotkin Letter, Rebatta Letter, Rotter Letter, S. Kim Letter, Salti Letter, Sherman Letter, Sinclair Letter, Watts Letter, Yang Letter, and Zlatkovic Letter.

³⁸ See Atreya Letter, Bauer Letter, Ben-Aharon Letter, Benetti Letter, Bouldin Letter, Brook Letter, C. Kim Letter, Cammarata Letter, Caputo Letter, Ciemens Letter, Dubin Letter, Gaida Letter, Giannone Letter, Hansford Letter, Hite Letter, Isaacson Letter, J. Goldstein Letter, J. Kirstein Letter, Keane Letter, Landsman Letter, Laughlin Letter, Linton Letter, Rea Letter, S. Sherwood Letter, Sc. Sullivan Letter, Stashefsky Letter, Stengel Letter, and Stuzin Letter.

³⁹ See A. Donnelly Letter, A. Wang Letter, Arberman Letter, Balber Letter, Brook Letter, Chan Letter, Chaudhry Letter, Chesler Letter, Daulong Letter, E. Goldstein Letter, Erman Letter, Ettles Letter, Garby Letter, H. Liu Letter, Hassell Letter, Hong Letter, Hotchkiss Letter, Ingles Letter, Ives Letter, Iwasa Letter, J. Choi Letter, J. Williams Letter, Jahng Letter, Kaneti Letter, Klaus Letter, Kott Letter, Kovac Letter, Kushner Letter, Lay Letter, Lopin Letter, Markasevic Letter, Miller Letter, Morant Letter, Nemcic Letter, O'Malley Letter, Oahana Letter, Piskun Letter, Rebatta Letter, Rotter Letter, S. Kim Letter, S. Sherwood Letter, Schuldenfrei Letter, Shatkin Letter, Shorack Letter, Sohn Letter, Song Letter, Strum Letter, Talib Letter, Thompson Letter, Z. Hepner Letter, Zemeck Letter, and Zour Letter.

⁴⁰ See Chesler Letter, Corl Letter, Crowell Letter, Erman Letter, Fennell Letter, Hassell Letter, Hite Letter, J. Weintraub Letter, J. Williams Letter, K. Kirstein Letter, K.Y. Lee Letter, Kaneti Letter, Laughlin Letter, Lazarus Letter, Magat Letter, Murphy Letter, S. Sherwood Letter, Schuldenfrei Letter, Sharon Letter, Shatkin Letter, Sinclair Letter, Stengel Letter, Strum Letter, and Watts Letter.

⁴¹ See Bailyn Letter, Jones Letter, and Lovett Letter.

⁴² See Lazarus Letter, and Zour Letter.

short-sell ahead of the market;⁴³ a market maker holding down the price of an upward moving stock in order to buy more at a lower price;⁴⁴ and a market maker slowing the upward movement of a stock to prevent call options from being exercised against him.⁴⁵

Nasdaq believes that the above concerns may flow from a “fundamental misapprehension about how SuperSOES works.”⁴⁶ According to Nasdaq, although shares held in the reserve size feature are not displayed, these shares remain immediately and continuously available for execution through the system.

As described by Nasdaq, SuperSOES matches incoming orders with quotes based on price and size information resident in the system, and automatically executes against all shares of automatic-execution participants—whether displayed or in reserve— instantaneously. According to Nasdaq, “at no point during this execution process are automatic-execution market participants given an opportunity to decline to trade, or sent orders that require their assent to consummate a transaction.” In addition, according to Nasdaq, “SuperSOES is already a powerful salve for exactly those maladies that the commenters assert will befall the Nasdaq market if the 1,000-share display requirement is removed.”⁴⁷ For example, Nasdaq stated that the SuperSOES requirement

⁴³ See Klein Letter, Lazarus Letter, and Morant Letter.

⁴⁴ See Helfman Letter, Heyman Letter, Ingram Letter, and Linton Letter.

⁴⁵ See Liu Letter.

⁴⁶ See Nasdaq Letter II.

⁴⁷ See Nasdaq Letter II. Nasdaq provided the following example to illustrate the process. Assume that there are three market makers at the inside bid. Market Maker A (“MMA”) is bidding \$20.00 with a display size of 200 and a reserve size of 1,000. Market Maker B (“MMB”) is bidding \$20.00 with a display size of 300 and a reserve size of 4,000. Market Maker C (“MMC”) is bidding \$20.00 with a display size of 100 and a reserve size of 1,500. Market Maker D (“MMD”) is bidding \$19.99 with a display size of 100 and a reserve size of zero.

A 3,000-share market order to sell is entered into SuperSOES. A total of 600 shares would be instantaneously taken from the displayed sizes of MMA (200), MMB (300), and MMC (100). In addition, 1,000 shares would be instantaneously taken from MMA’s reserve size, and 1,400 shares would also be instantaneously taken from MMB’s reserve size, filling the incoming order in full.

This process would result in a single automatic execution of 1,200 shares for MMA, a single automatic execution of 1,700 shares for MMB, and a single automatic execution of 100 shares for MMC. Nasdaq represents that as a result of the automatic execution process “there is simply no way that an automatic-execution market participant, having placed share amounts (displayed or reserve) in SuperSOES, can inhibit or manipulate subsequent executions against that trading interest while those shares remain in the system.”

that automatic execution market participants be firm for the amounts and prices of the trading interest they place into the system reduces the potential for, and increases the costs of, attempts to manipulate the market. Likewise, the swift and sure execution of orders by SuperSOES based on price-time priority greatly increases the confidence of investors that they are being treated fairly.

The Commission agrees that a great many of the commenters appear to have misunderstood the way the reserve size feature operates and the nature of the proposed rule change. This misunderstanding appears to be the basis of many of the opposing comments. The Commission notes that when an order is sent to Nasdaq for automatic execution through SuperSOES, the system immediately accesses all liquidity at the best price residing within the system to fill that order, whether that liquidity is displayed or held in reserve size. As Nasdaq has represented in its responses to commenters' objections, the automatic execution against all such resident size takes place instantaneously.⁴⁸ When an order cannot be filled by the market maker's displayed size alone (or by the aggregate displayed size of all market makers at the same best price, if there is more than one market maker at that price), the system immediately accesses the reserve size behind it (and behind the displayed size of all market makers at that price, in time priority), and trades against it all in a single execution for each market maker.

4. Competitive Issues

Four commenters maintained, in support of the proposal, that it would promote fair competition across the markets.⁴⁹ As explained by one commenter, for example, it would level the playing field between Nasdaq participants and members of UTP exchanges, and between Nasdaq and its primary competitors, ECNs and the regional exchanges.⁵⁰ Specifically, two commenters argued that Nasdaq is the only market center that imposes a 1000-share display requirement, and is thus competitively disadvantaged.⁵¹ Another commenter noted that it is "fundamentally unfair to force a market participant to depend on a potential competitor [if a market maker enters an order into an ATS] due to an artificial

regulatory disparity between the two participants."⁵²

Other commenters argued that the function of an ECN is different than that of market makers on Nasdaq,⁵³ in that an ECN's purpose is to display and execute orders and not to make markets.⁵⁴ Some commenters added that an ECN is not afforded the same advantages as market makers⁵⁵ (e.g., the ability to make a profit on the market spread),⁵⁶ and thus should not be subject to the same minimum display requirements.

One commenter cited a recent Nasdaq study indicating that in the post-decimalization environment, the average quote size posted by an ECN was 1190 shares, challenging with this data Nasdaq's argument that it needs to reduce Nasdaq's display-size requirement to 100 shares in order to compete.⁵⁷ This commenter believed that the proposed rule change would provide a "rather marginal competitive benefit" to Nasdaq at a "high cost to market liquidity and transparency."⁵⁸ The same commenter further argued that Nasdaq, as a subsidiary of a national securities association, is bound by the Act to maintain rules that "remove impediments to and perfect the mechanism of a free and open market," which, the commenter stated, is a higher standard than that imposed by the regulatory framework governing ECNs.⁵⁹

In response, Nasdaq noted that Archipelago Exchange, an equity trading facility of the Pacific Exchange, offers reserve size functionality with no apparent minimum display requirement, as do ECNs that provide alternative venues to trade Nasdaq securities.⁶⁰ In addition, Nasdaq asserted that, in fact, no other market center providing reserve size imposes a requirement to display a 1000 share quote for the privilege.

Nasdaq also challenged the relevance of data showing that the average display

size on ECNs is 1,190 shares as undermining Nasdaq's contention that it needs to reduce its own minimum display size to 100 shares in order to compete.⁶¹ According to Nasdaq, in many cases ECNs aggregate orders from multiple subscribers, while market makers may or may not aggregate trading interest. Further, an average quote on a system that places no restriction on the use of reserve size is different, Nasdaq maintained, than a system that has a minimum display requirement inhibiting the use of its reserve size feature. Moreover, Nasdaq argued, an average size of 1,190 indicates that in many cases ECNs in fact display quotes of less than 1000 shares, with reserve size functionality, while Nasdaq market makers cannot provide their customers with the same. To further bolster its argument that it needs to reduce the display minimum in order to compete, Nasdaq cited a recent review it conducted of reserve size usage by ECNs, which found that almost 40 percent of ECN quotes accessed by SelectNet had a reserve size behind them, and that of those 40 percent, 75 percent were displaying less than 1000 shares.⁶²

As noted above, the Commission has previously approved rules of an exchange (specifically, the Archipelago Exchange)⁶³ that provide for a reserve size functionality with no minimum-size display requirement, reflecting the Commission's belief that such rules are not inconsistent with the Act. Moreover, the Commission believes that the proposed rule change may afford participants on Nasdaq greater flexibility in handling large orders in a manner enabling them to compete with participants in other market centers. The Commission is not aware of any issues regarding the use of reserve size with no display requirement on the Archipelago Exchange, and believes, further, that Nasdaq has adequately addressed the other major issues raised by commenters concerning transparency, liquidity, and impact on executions and potential for abuse in its own proposed system. Thus, to deny Nasdaq the ability to reduce its display size requirement, in the Commission's view, would inhibit fair competition among markets.

5. Timing of the Proposed Rule Change

A large number of commenters argued that it was too soon after the implementation of SuperSOES to

⁴⁸ See Levine Letter.

⁴⁹ See Abelson Letter, Benetti Letter, Burgess Letter, Herrick Letter, J. Kirstein Letter, J. Raffaele Letter, J. Williams Letter, Kott Letter, Oahana Letter, Panayotov Letter, Rebatta Letter, Stengel Letter, Thompson Letter, and Zlatkovic Letter.

⁵⁰ See Abelson Letter, Ball Letter, Burgess Letter, E. Goldstein Letter, Gosling Letter, Hansford Letter, Ingram Letter, J. Kirstein Letter, J. Raffaele Letter, J. Williams Letter, Kernan Letter, Oahana Letter, Panayotov Letter, Rebatta Letter, Stengel Letter, Thompson Letter, Voldarsky Letter, and Zlatkovic Letter.

⁵¹ See Benetti Letter, Herrick Letter, Ingram Letter, J. Raffaele Letter, Kott Letter, Schultz Letter, and Stengel Letter.

⁵² See, e.g., Kroft Letter.

⁵³ See Morgan Stanley Letter.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ See Nasdaq Letter I.

⁶¹ *Id.*

⁶² *Id.*

⁶³ See *supra*, note 24.

⁴⁸ See Nasdaq Letter I.

⁴⁹ See Davenport Letter, Morgan Keegan Letter, Robertson Stephens Letter, and STA Letter.

⁵⁰ See STA Letter, *see also* Levine Letter.

⁵¹ See STA Letter and Davenport Letter.

introduce the proposed changes,⁶⁴ and that more time was necessary to collect meaningful data and evaluate the current system before modifying it in this significant way.⁶⁵ Some commenters believed that the two months of trading on the SuperSOES System before the proposal was first filed were a slow trading period and unrepresentative of typical market conditions.⁶⁶ Many commenters also noted that the proposal was published relatively soon after the impact of the

⁶⁴ See A. Donnelly Letter, A. Wang Letter, Abelson Letter, Atraya Letter, B. Donnelly Letter, Balber Letter, Ben-Aharon Letter, Benetti Letter, Block Letter, Bouldin Letter, Burgess Letter, C. Kim Letter, Caputo Letter, Chesler Letter, Choi Letter, Ciemens Letter, Cosenza Letter, Crowell Letter, D'Aleo Letter, Dershow Letter, Diemar Letter, Dolnier Letter, Donitz Letter, E. Goldstein Letter, E. Knight Letter, Edmonds Letter, Erman Letter, Ettles Letter, F. Raffaele Letter, Feinstein Letter, Frank's Lee Letter, Gaida Letter, Garby Letter, Getz Letter, Giannone Letter, Giordano Letter, Goldhair Letter, Gormley Letter, Gregg Letter, Grill Letter, Gussin Letter, H. Liu Letter, Hansford Letter, Hayden Letter, Helfman Letter, Herrick Letter, Hodges Letter, Hotchkiss Letter, Ingram Letter, Ives Letter, Iwasa Letter, J. Goldstein Letter, J. Hughes Letter, J. Kirstein Letter, J. Raffaele Letter, J. Schmidt Letter, J. Williams Letter, Jahng Letter, K. Kirstein Letter, K. Murphy Letter, K.Y. Lee Letter, Kaneti Letter, Keane Letter, Kinzelberg Letter, Klarreich Letter, Klaus Letter, Klein Letter, Kobin Letter, Kott Letter, Kovac Letter, Kushner Letter, L. Waxman Letter, LaBonar Letter, Landsman Letter, Leung Letter, Lopin Letter, Lovett Letter, Lutz Letter, Magat Letter, McCabe Letter, Miller Letter, Miller Letter, Morant Letter, Morgan Letter, Namolik Letter, Nemic Letter, Nicoletta Letter, Nierling Letter, Oahana Letter, Orgen Letter, Oshins Letter, Panayotov Letter, Parsons Letter, Petrov Letter, Philip Letter, Plotkin Letter, Poulton Letter, R. Murphy Letter, R. Murphy Letter, Rea Letter, Rebatta Letter, Roth-McEnroe Letter, Rotter Letter, S. Hughes Letter, S. Kim Letter, S. Sherwood Letter, Salti Letter, Schreiber Letter, Schulberg Letter, Schuldenfrei Letter, Schultz Letter, Schwartz Letter, Senna Letter, Shatkin Letter, Sherman Letter, Shorack Letter, Sinclair Letter, Sinnreich Letter, Skinner Letter, Sohn Letter, Stancevic Letter, Stuzin Letter, Talib Letter, Teitelman Letter, Thompson Letter, Towne Letter, Voldarsky Letter, Ward Letter, Watts Letter, Weckherlen Letter, West Letter, Williamson Letter, Wilson Letter, Yang Letter, Yang Letter, and Zlatkovic Letter.

⁶⁵ See Abelson Letter, Ball Letter, Bradshaw Letter, C. Kim Letter, Crowell Letter, Dolnier Letter, Federici Letter, Garby Letter, Giannone Letter, Gregg Letter, H. Liu Letter, Hinkel Letter, Hodges Letter, Ingles Letter, Ingram Letter, Isaacson Letter, Ives Letter, J. Kirstein Letter, J. Raffaele Letter, J. Williams Letter, Jahng Letter, Kernan Letter, Klaus Letter, L. Waxman Letter, Landsman Letter, Leung Letter, Magat Letter, Miller Letter, Nicoletta Letter, Oahana Letter, Orgen Letter, Oshins Letter, Panayotov Letter, Paper Letter, Plotkin Letter, Ratto Letter, Rebatta Letter, Rotter Letter, S. Kim Letter, Salti Letter, Sherman Letter, Sinclair Letter, Skinner Letter, Smith Letter, Sohn Letter, Squires Letter, Teitelman Letter, Travers Letter, Watts Letter, Weckherlen Letter, West Letter, Yang Letter, Yang Letter, and Zlatkovic Letter.

⁶⁶ See Feeney Letter, Garby Letter, Hotchkiss Letter, Ingles Letter, Ingram Letter, J. Raffaele Letter, Jahng Letter, Landsman Letter, Leung Letter, Magat Letter, Miller Letter, Nicoletta Letter, Oahana Letter, Salti Letter, Sinclair Letter, Smith Letter, Teitelman Letter, Watts Letter, Weckherlen Letter, and West Letter.

September 11, 2001 terrorist attacks on America,⁶⁷ and wrote that it was difficult to meaningfully consider the potential effect of the proposed changes during a period in which the markets and market participants were still recovering from that episode.

Nasdaq contended that, in view of the competitive process, it must be free to quickly respond to the marketplace, and rejected the notion that its ability to alter and improve its systems is limited by how short a period of time had elapsed since a system was last changed.⁶⁸

The Commission believes that in view of the further passage of time since the proposed rule change was filed, these timing issues are no longer sufficient a concern to warrant a delay in the Nasdaq's ability to adopt the proposed rule change. The Commission expects NASD Regulation and Nasdaq to monitor trading to ensure the proper use of the reserve size feature and reevaluate the minimum display requirement if there is an overall decline in the quality of the market.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁶⁹ that the proposed rule change (SR-NASD-2001-66) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷⁰

Margaret H. McFarland,
Deputy Secretary.

Appendix

1. Letter from Robert A. Gaida Jr., Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Gaida Letter").

2. Letter from Edward J. Keane Jr., Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Keane Letter").

3. Letter from David Schwartz, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 18, 2001 ("Schwartz Letter").

4. Letter from Keith A. Donitz, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Donitz Letter").

5. Letter from Frantisek Kovac, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Kovac Letter").

⁶⁷ See Benetti Letter, Burgess Letter, Cosenza Letter, Crowell Letter, Getz Letter, Giordano Letter, Ingram Letter, Kernan Letter, Klaus Letter, Magat Letter, Miller Letter, Nicoletta Letter, Nierling Letter, Oahana Letter, Oshins Letter, Plotkin Letter, R. Murphy Letter, Sherman Letter, Sohn Letter.

⁶⁸ See Nasdaq Letter I.

⁶⁹ 15 U.S.C. 78s(b)(2).

⁷⁰ 17 CFR 200.30-3(a)(12).

6. Letter from Brian J. Dershow, Equities Trader, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Dershow Letter").

7. Letter from Kathleen Murphy, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Murphy Letter").

8. Letter from Matthew C. Rea, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Rea Letter").

9. Letter from David B. Feinstein, Principal, Dodo Ventures, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Feinstein Letter").

10. Letter from Eugene C. Giaquinto, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Giaquinto Letter").

11. Letter from Joseph J. Gormley III, Small Investor, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Gormley Letter").

12. Letter from R. Travis Williamson, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Williamson Letter").

13. Letter from David Lui, Jr., Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 18, 2001 ("Lui Letter").

14. Letter from Seth Helfman, to Jonathan G. Katz, Secretary, SEC, dated October 19, 2001 ("Helfman Letter").

15. Letter from David M. Kushner, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 13, 2001 ("Kushner Letter").

16. Letter from Edward Miller, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Miller Letter").

17. Letter from Jonathan R. Goldstein, to Jonathan G. Katz, Secretary, SEC, dated October 18, 2001 ("J. Goldstein Letter").

18. Letter from Harlan R. Schreiber, Esquire, to Jonathan G. Katz, Secretary, SEC, dated October 18, 2001 ("Schreiber Letter").

19. Letter from Eric A. Shapiro, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("E. Shapiro Letter").

20. Letter from Sean Ward, to Jonathan G. Katz, Secretary, SEC, dated October 19, 2001 ("Ward Letter").

21. Letter from Stephen M. Hughes, to Jonathan G. Katz, Secretary, SEC, dated October 20, 2001 ("S. Hughes Letter").

22. Letter from John R. Hughes III, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("J. Hughes Letter").

23. Letter from Erika Roth-McEnroe, to Jonathan G. Katz, Secretary, SEC, undated, received November 20, 2001 ("Roth-McEnroe Letter").

24. Letter from Matthew Bouldin, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Bouldin Letter").

25. Letter from Joseph Dondero, Individual Investor, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Dondero Letter").

26. Letter from Ronen T. Zour, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Zour Letter").

27. Letter from Michael Parsons, Registered Representative, to Jonathan G. Katz,

Secretary, SEC, undated, received November 20, 2001 ("Parsons Letter").

28. Letter from Bryan M. Donnelly, to Jonathan G. Katz, Secretary, SEC, undated, received November 20, 2001 ("B. Donnelly Letter").

29. Letter from Jeffrey S. Schultz, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, undated, received November 20, 2001 ("Schultz Letter").

30. Letter from John Chinnock, Securities Principal, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, undated, received November 20, 2001 ("Chinnock Letter").

31. Letter from Joel Brandon Jones, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("J. Jones Letter").

32. Letter from Richard Lutz, Registered Representative, to Jonathan G. Katz, Secretary, SEC, undated, received November 20, 2001 ("Lutz Letter").

33. Letter from Corey N. Shapiro, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("C. Shapiro Letter").

34. Letter from Justin Namolik, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Namolik Letter").

35. Letter from Ryan E. Poulton, Registered Representative, NASD, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Poulton Letter").

36. Letter from Mathew LaBonar, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("LaBonar Letter").

37. Letter from David Kinzelberg, Equity Trader, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Kinzelberg Letter").

38. Letter from Blair Ettles, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Ettles Letter").

39. Letter from Daniel Balber, NASD Registered Principal, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Balber Letter").

40. Letter from Feral Talib, Registered Principal, to Jonathan G. Katz, Secretary, SEC, dated November 15, 2001 ("Talib Letter").

41. Letter from Andrew Donnelly, Registered Principal, to Jonathan G. Katz, Secretary, SEC, dated October 13, 2001 ("A. Donnelly Letter").

42. Letter from Eric Klein, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("E. Klein Letter").

43. Letter from Carl Z. Giannone, Registered Representative, Limited Representative Equity Trader, General Securities Principal, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Giannone Letter").

44. Letter from Choi Kilyoung, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Kilyoung Letter").

45. Letter from Matthew Nemcic, to Jonathan G. Katz, Secretary, SEC, dated October 13, 2001 ("Nemcic Letter").

46. Letter from Kevin McCabe, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("McCabe Letter").

47. Letter from Elizabeth Goldstein, Registered Representative, MS, to Jonathan G.

Katz, Secretary, SEC, dated October 16, 2001 ("E. Goldstein Letter").

48. Letter from Benjamin Lee, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("B. Lee Letter").

49. Letter from John J. Morgan, Series 7 Trader, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("J. Morgan Letter").

50. Letter from Daniel M. Stuzin, Esquire, to Jonathan G. Katz, Secretary, SEC, dated October 18, 2001 ("Stuzin Letter").

51. Letter from Justin M. Gosling, Equities Trader, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Gosling Letter").

52. Letter from Peter Ciemins, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Ciemins Letter").

53. Letter from Markham E. Murphy, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, undated, received November 30, 2001 ("M. Murphy Letter").

54. Letter from Favian A. Roldan, Registered Broker, Heartland Securities Corporation, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Roldan Letter").

55. Letter from Jason A. Strum Registered Representative, Heartland Securities Corporation, to Jonathan G. Katz, Secretary, SEC, dated October 13, 2001 ("Strum Letter").

56. Letter from George F. Hassell, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Hassell Letter").

57. Letter from David Lazarus, Registered Nasdaq Principal, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Lazarus Letter").

58. Letter from Ziad El-Assad, Registered NASD Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("El-Assad Letter").

59. Letter from Kevin Diemar, Registered Nasdaq Principal, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Diemar Letter").

60. Letter from Michael Washburn, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, undated, received October 17, 2001 ("Washburn Letter").

61. Letter from Adam S. Chesler, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Chesler Letter").

62. Letter from Christian Daulong, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Daulong Letter").

63. Letter from Shari M. Sherwood, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("S. Sherwood Letter").

64. Letter from John D. Lovett, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Lovett Letter").

65. Letter from Stephen Edmonds, Registered Representative, Heartland

Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Edmonds Letter").

66. Letter from Jay Bailyn, Registered Representative, Heartland Securities, LLC, NASD Member, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Bailyn Letter").

67. Letter from Michael D. Linton, Registered Representative, Heartland Securities Corporation, to Jonathan G. Katz, Secretary, SEC, dated October 12, 2001 ("Linton Letter").

68. Letter from Michael Sherwood, Registered Principal, Heartland Securities Corporation, to Jonathan G. Katz, Secretary, SEC, dated October 12, 2001 ("M. Sherwood Letter").

69. Letter from Christopher A. Hite, Registered NASD Principal, Heartland Securities, Inc., to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Hite Letter").

70. Letter from Grier Laughlin, Registered Nasdaq Principal, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Laughlin Letter").

71. Letter from Christopher Brook, Registered Principal, Heartland Securities Corporation, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Brook Letter").

72. Letter from Damian Falcone, Registered Representative, Heartland Securities Corporation, to Jonathan G. Katz, Secretary, SEC, undated, received October 18, 2001 ("Falcone Letter").

73. Letter from Scott Sullivan, Registered Representative, Heartland Securities Corporation, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Scott Sullivan Letter").

74. Letter from Sal Chaudhry, Registered Principal, Heartland Securities Corporation, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Chaudhry Letter").

75. Letter from William Nathan Shorack, Registered Principal, Heartland Securities Corporation, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Shorack Letter").

76. Letter from Richard T. Hayden, Registered Representative, Heartland Securities Corporation, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Hayden Letter").

77. Letter from Glen Dubin, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Dubin Letter").

78. Letter from Edward E. Hong, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Hong Letter").

79. Letter from Tal Sharon, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Sharon Letter").

80. Letter from Christopher Greeley, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Greeley Letter").

81. Letter from Jeremy Zucker, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Zucker Letter").

82. Letter from Joel Arberman, Registered Representative, to Jonathan G. Katz,

Secretary, SEC, dated November 19, 2001 ("Arberman Letter").

83. Letter from Joon Hwan Choi, Securities Trader, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("J. Choi Letter").

84. Letter from Boris M. Piskun, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Piskun Letter").

85. Letter from Marc R Grossman, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Grossman Letter").

86. Letter from Edward T. Flaherty Jr., to Jonathan G. Katz, Secretary, SEC, dated October 12, 2001 ("Flaherty Letter").

87. Letter from Richard Lay, Professional Trader, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Lay Letter").

88. Letter from Coreina Chan, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Coreina Letter").

89. Letter from Zachary Hepner, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Hepner Letter").

90. Letter from Douglas Song, Professional Trader, to Jonathan G. Katz, Secretary, SEC, dated October 18, 2001 ("D. Song Letter").

91. Letter from Michael O'Malley, Professional Trader, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("O'Malley Letter").

92. Letter from Karl Sohn, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 12, 2001 ("Sohn Letter").

93. Letter from Greg T. Bauer, to Jonathan G. Katz, SEC, dated October 15, 2001 ("Bauer Letter").

94. Letter from Evan Stashefsky, Equities Trader, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Stashefsky Letter").

95. Letter from Keith Corl, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Corl Letter").

96. Letter from Alexander F. Zemek, to Jonathan G. Katz, Secretary, SEC, dated October 13, 2001 ("Zemek Letter").

97. Letter from Michael C. Malizia, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Malizia Letter").

98. Letter from Jeffrey Kirstein, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Kirstein Letter").

99. Letter from Keith Kirstein, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("K. Kirstein Letter").

100. Letter from Brian Ingram, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Ingram Letter").

101. Letter from Andrew Rotter, to Jonathan G. Katz, Secretary, SEC, undated, received November 20, 2001 ("Rotter Letter").

102. Letter from Ira Landsman, CPA, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Landsman Letter").

103. Letter from Jimmie E. Williams, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("J. Williams Letter").

104. Letter from Adam B. Salti, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Salti Letter").

105. Letter from Rami Abelson, Trader, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Abelson Letter").

106. Letter from Andrew C. Sohn, to Jonathan G. Katz, Secretary, SEC, dated October 18, 2001 ("Sohn Letter").

107. Letter from Bradford Hotchkiss, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Bradford Letter").

108. Letter from Jefferson Magat, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 13, 2001 ("Magat Letter").

109. Letter from Howard Teitelman, Registered Principal, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Teitelman Letter").

110. Letter from Lee Waxman, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, undated, received November 20, 2001 ("Waxman Letter").

111. Letter from Lee M. Weckherlen, Registered Representative, to Jonathan G. Katz, Secretary, SEC, Dated October 15, 2001 ("Weckherlen Letter").

112. Letter from Eric Orgen, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Orgen Letter").

113. Letter from Kevin Jahng, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Jahng Letter").

114. Letter from Brian M. Crowell, Registered Principal, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Crowell Letter").

115. Letter from Marc Miller, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("M. Miller Letter").

116. Letter from Jeremy Ives, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Ives Letter").

117. Letter from Tyler Isaacson, Registered Principal, Heartland Securities Corporation, to Jonathan G. Katz, Secretary, SEC, undated, received November 30, 2001 ("Isaacson Letter").

118. Letter from Timothy J. Wilson, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Wilson Letter").

119. Letter from Richard P. Getz, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Getz Letter").

120. Letter from Frank J. Kropf, Day Trader, Self-Employed, to Jonathan G. Katz, Secretary, SEC, dated October 13, 2001 ("Kropf Letter").

121. Letter from Kristin Hinkel, Registered Principal, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Hinkel Letter").

122. Letter from Neal King, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("King Letter").

123. Letter from Do Hoon Kim, to Jonathan G. Katz, Secretary, SEC, dated November 30, 2001 ("D. Kim Letter").

124. Letter from Daniel J. Cosenza, Registered principal, to Jonathan G. Katz,

Secretary, SEC, dated November 30, 2001 ("Cosenza Letter").

125. Letter from Diane P. Murphy, Managing Director, Robertson Stephens, Inc., to Jonathan G. Katz, Secretary, SEC, dated December 3, 2001 ("Robertson Stephens Letter").

126. Letter from Hedi H. Reynolds, Managing Director, Nasdaq Trading, Morgan Keegan & Company, Inc., to Jonathan G. Katz, Secretary, SEC, dated December 3, 2001 ("Morgan Keegan Letter").

127. Letter from Richard Cammarata, General Securities Principal, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Cammarata Letter").

128. Letter from Thomas Ingles, Registered Principal, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Ingles Letter").

129. Letter from Charles R. Nierling, Registered Options Principal, to Jonathan G. Katz, Secretary, SEC, dated December 4, 2001 ("Nierling Letter").

130. Letter from Bill J. Deligiannis, Andover Trading, dated October 31, 2001.

131. Letter from Hummayun Majid, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Majid Letter").

132. Letter from Lee Lazar, Equity Trader, Chimera Capital, to Jonathan G. Katz, Secretary, SEC, dated October 24, 2001 ("Lazar Letter").

133. Letter from Samuel S. Mikhelson, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Mikhelson Letter").

134. Letter from Tal Plotkin, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Plotkin Letter").

135. Letter from Thomas A. Stengel, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 24, 2001 ("Stengel Letter").

136. Letter from Jay Crosby, Registered Representative, Heartland Securities Corporation, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Crosby Letter").

137. Letter from Raymond J. Murphy, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("R. Murphy Letter").

138. Letter from Anthony J. Masso, Professional Trader, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Masso Letter").

139. Letter from Joshua Levine, to Jonathan G. Katz, Secretary, SEC, dated December 6, 2001 ("Levine Letter").

140. Letter from Ronn Diamond, Registered Representative, to Jonathan G. Katz, Secretary, SEC, undated received December 13, 2001 ("Diamond Letter").

141. Letter from Matthew R. Keegan, Registered Principal, Heartland Securities Corporation, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Keegan Letter").

142. Letter from Mehmed Markasevic, Registered Representative, to Jonathan G. Katz, Secretary, SEC, undated, received December 18, 2001 ("Markasevic Letter").

143. Letter from Scott Sukenick, Registered Representative, to Jonathan G. Katz,

Secretary, SEC, undated, received December 26, 2001 ("Sukenick Letter").

144. Letter from Chris Paper, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Paper Letter").

145. Letter from Todd Skinner, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Skinner Letter").

146. Letter from Samson Leung, Registered Principal, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Leung Letter").

147. Letter from Robert B. Smith, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("R. Smith Letter").

148. Letter from Shuming Yang, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Shuming Letter").

149. Letter from Angelo C. Nicoletta, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Nicoletta Letter").

150. Letter from Timothy K. Dolnier, to Jonathan G. Katz, Secretary, SEC, dated October 12, 2001 ("Dolnier Letter").

151. Letter from Nicholas E. Federici, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Federici Letter").

152. Letter from Alex J. Lopez, Registered Principal/Equity Trader, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Giordano Letter").

153. Letter from Michael D. Giordano, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Giordano Letter").

154. Letter from Giangi Ratto, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Ratto Letter").

155. Letter from Darren L. Heyman, Esquire, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Heyman Letter").

156. Letter from Richard J. Travers III, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Travers Letter").

157. Letter from Michael Feeney, to Jonathan G. Katz, Secretary, SEC, undated, received January 2, 2002 ("Feeney Letter").

158. Letter from Ryan West, Registered Principal, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("R. West Letter").

159. Letter from Thomas F. Bradshaw, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Bradshaw Letter").

160. Letter from John Kernan, Registered Representative, to Jonathan G. Katz, Secretary, SEC, undated received January 7, 2002 ("Kernan Letter").

161. Letter from Douglas Squires, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Squires Letter").

162. Letter from Christopher Ball, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("C. Ball Letter").

163. Letter from David Kobin, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Kobin Letter").

164. Letter from Alexander Chan, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("A. Chan Letter").

165. Letter from Kenneth Garby, Registered Representative, to Jonathan G. Katz, Secretary, SEC, undated, received January 7, 2002 ("Garby Letter").

166. Letter from Anton Panayotov, Equity Trader, to Jonathan G. Katz, Secretary, SEC, undated, received January 8, 2002 ("Panayotov Letter").

167. Letter from Greg A. Oshins, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Oshins Letter").

168. Letter from C. Kevin Yang, Registered Principal, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Yang Letter").

169. Letter from Samuel Oahana, Professional Trader, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Oahana Letter").

170. Letter from Charles J. Kim, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("C. Kim Letter").

171. Letter from Sunil Philip, Securities Trader, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 18, 2001 ("Philip Letter").

172. Letter from Harlan Thompson, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("H. Thompson Letter").

173. Letter from Jonathan W. Hodges, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Hodges Letter").

174. Letter from Yusef J. Burgess, Registered Representative, to Jonathan G. Katz, Secretary, SEC, undated, received January 8, 2002 ("Burgess Letter").

175. Letter from Matthew Watts, Broker, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Watts Letter").

176. Letter from John J. Raffaele, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Raffaele Letter").

177. Letter from Peter Zlatkovic, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Zlatkovic Letter").

178. Letter from David Sherman, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Sherman Letter").

179. Letter from Alexander Benetti, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 12, 2001 ("Benetti Letter").

180. Letter from Adam Sinclair, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Sinclair Letter").

181. Letter from Nikhil Atreya, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Atreya Letter").

182. Letter from Ilian Petrov, NASD Principal, to Jonathan G. Katz, Secretary,

SEC, dated October 15, 2001 ("Petrov Letter").

183. Letter from Richard Rebatta, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Rebatta Letter").

184. Letter from Christopher H. Klaus, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Klaus Letter").

185. Letter from John C. Giesa, President, and Michael A. Bird, Senior Vice Chairman, Security Traders Association, to Jonathan G. Katz, Secretary, SEC, dated December 12, 2001 ("STA Letter").

186. Letter from Howard M. Liu, Securities Trader, to Jonathan G. Katz, Secretary, SEC, dated October 18, 2001 ("H. Liu Letter").

187. Letter from Frank J. Raffaele, Jr., Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 11, 2001 ("F. Raffaele Letter").

188. Letter from Chris Gregg, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Greg Letter").

189. Letter from Igor Stancevic, Registered Principal, to Jonathan G. Katz, Secretary, SEC, undated, received January 8, 2002 ("Stancevic Letter").

190. Letter from Saeyoon Kim, Registered Principal, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("S. Kim Letter").

191. Letter from Dokyun No, NASD Member, to Jonathan G. Katz, Secretary, SEC, undated, received January 8, 2002 ("D. No Letter").

192. Letter from Kyle J. Schroeder, Registered Principal, to Jonathan G. Katz, Secretary, SEC, dated October 12, 2001 ("Schroeder Letter").

193. Letter from Alexander Shatkin, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Shatkin Letter").

194. Letter from Darin E. Cohen, Individual Investor, to Jonathan G. Katz, Secretary, SEC, undated, received January 8, 2001 ("D. Cohen Letter").

195. Letter from Michael Sinnreich, Equity Trader, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Sinnreich Letter").

196. Letter from Robert L. Oliver, Professional Trader, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Oliver Letter").

197. Letter from Randy Gussin, Registered Representative, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, undated, received January 8, 2001 ("Gussin Letter").

198. Letter from Bruce Hepner, Registered Representative, to Jonathan G. Katz, Secretary, SEC, undated, received January 8, 2001 ("Hepner Letter").

199. Letter from Dror Ben-Aharon, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Ben-Aharon Letter").

200. Letter from Bradford Kott, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Kott Letter").

201. Letter from Matthew Schroeder, Registered Representative, NASD, to Jonathan G. Katz, Secretary, SEC, dated October 12, 2001 ("Schroeder Letter").

202. Letter from Jason Klarreich, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Klarreich Letter").

203. Letter from Eli Lopin, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Lopin Letter").

204. Letter from Ben Williams, Registered Representative, NASD, to Jonathan G. Katz, Secretary, SEC, dated October 12, 2001 ("B. Williams Letter").

205. Letter from Jason Towne, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated January 9, 2001 ("Towne Letter").

206. Letter from Kiet T. Vo, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Vo Letter").

207. Letter from Isaak Volodarsky, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Volodarsky Letter").

208. Letter from Dario Cosic, Registered Representative, to Jonathan G. Katz, Secretary, SEC, undated, received January 9, 2001 ("Cosic Letter").

209. Letter from Jason Herrick, to Jonathan G. Katz, Secretary, SEC, undated, received January 9, 2001 ("Herrick Letter").

210. Letter from Simrin Dhillon, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 14, 2001 ("Dhillon Letter").

211. Letter from Thomas N. McManus, Executive Director and Counsel, Morgan Stanley, to Jonathan G. Katz, Secretary, SEC, dated December 4, 2001 ("Morgan Stanley Letter").

212. Letter from John Schmidt, Registered Principal, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, undated, received January 9, 2001 ("J. Schmidt Letter").

213. Letter from Robert V. Morant, Registered Representative, to Jonathan G. Katz, Secretary, SEC, undated, received January 9, 2001 ("Morant Letter").

214. Letter from Hirokazu Iwasa, to Jonathan G. Katz, Secretary, SEC, dated October 17, 2001 ("Iwasa Letter").

215. Letter from Eric P. Knight, Equity Trader, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("E. Knight Letter").

216. Letter from Junghyun Won, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Won Letter").

217. Letter from Joshua A. D'Aleo, Equity Trader, Heartland Securities, to Jonathan G. Katz, Secretary, SEC, undated, received January 7, 2001 ("D'Aleo Letter").

218. Letter from Kerry Senna, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("Senna Letter").

219. Letter from Kon-Young Lee, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("K. Lee Letter").

220. Letter from Alexander Wang, to Jonathan G. Katz, Secretary, SEC, dated October 16, 2001 ("A. Wang Letter").

221. Letter from Charles William Hansford, to Jonathan G. Katz, Secretary, SEC, dated October 18, 2001 ("Hansford Letter").

222. Letter from Cary S. Grill, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 12, 2001 ("Grill Letter").

223. Letter from Jonathan Schuldenfrei, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Schuldenfrei Letter").

224. Letter from Jeffrey Schulberg, to Jonathan G. Katz, Secretary, SEC, dated October 18, 2001 ("Schulberg Letter").

225. Letter from Cornel Catrina, to Jonathan G. Katz, Secretary, SEC, dated October 18, 2001 ("Catrina Letter").

226. Letter from Eliav Bock, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 18, 2001 ("Bock Letter").

227. Letter from Marina J. Kaneti, Registered Principal, to Jonathan G. Katz, Secretary, SEC, dated October 18, 2001 ("Kaneti Letter").

228. Letter from Kristopher Goldhair, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Goldhair Letter").

229. Letter from Joshua Weintraub, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Weintraub Letter").

230. Letter from David Caputo, Registered Representative, to Jonathan G. Katz, Secretary, SEC, dated October 15, 2001 ("Caputo Letter").

231. Letter from Tolga Erman, Registered Principal, to Jonathan G. Katz, Secretary, SEC, undated, received February 22, 2001 ("Erman Letter").

232. Letter from Brenda C. Blackard, First Vice President, Manager Nasdaq Trading, Davenport & Company LLC, to Jonathan G. Katz, Secretary, SEC, dated March 7, 2001 ("Blackard Letter").

233. Letter from Piers Fennell, Individual Investor, to Jonathan G. Katz, Secretary, SEC, dated April 2, 2001 ("Fennell Letter").

[FR Doc. 02-14139 Filed 6-7-02; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46013; File No. SR-NASD-2002-55]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to a Proposed Rule Change Relating to the Minimum Life of Directed Orders in Nasdaq's SuperMontage System and the Minimum Life of SelectNet Orders

May 31, 2002.

On April 18, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to: (1) Establish a minimum life of five seconds for Directed Orders in Nasdaq's future Order Display and Collector

Facility ("NNMS" or "SuperMontage"), and (2) reduce from ten seconds to five seconds the minimum time period before an order entered into Nasdaq's SelectNet system may be cancelled by the entering party. The proposed rule change was published for comment in the **Federal Register** on May 1, 2002.³

The Commission received one comment regarding the proposal.⁴ According to this one commenter, the reduction from ten seconds to five seconds of the minimum life of SelectNet orders was both justified and beneficial, and would reduce opportunity costs as well as increase market efficiency. The commenter also believes that, "[b]ased on the current performance of the SelectNet system, the risk of rejected executions with a 5 second delay is almost zero. [Further, c]urrent SelectNet performance levels justify further cutting the delay down to as little as one second."

The Commission finds that the proposed rule change is consistent with the requirements of section 15A of the Act⁵ and the rules and regulations thereunder. Specifically, the Commission finds that the proposed rule change is consistent with Section 15(A)(b)(6),⁶ which provides that the rules of the association be designed to promote just and equitable principals of trade, to foster cooperation and coordination with person engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Nasdaq represents that the average time for a SelectNet order to be delivered to a recipient is 0.5 seconds, and that this standard will be maintained with Directed Orders in SuperMontage.⁷ The Commission finds that the proposal to establish a minimum life of five seconds for Directed Orders in SuperMontage is consistent with section 15A(b)(6) of the Act⁸ because it should provide market participants with a reasonable opportunity to respond to incoming orders before they are cancelled, while

³ See Securities Exchange Act Release No. 45813 (April 24, 2002), 67 FR 21792.

⁴ See e-mail comment from Joshua Levine to rule-comments@sec.gov, Commission, dated May 15, 2002.

⁵ 15 U.S.C. 78o-3.

⁶ 15 U.S.C. 78o-3(b)(6).

⁷ Telephone conversation between Thomas Moran, Associate General Counsel, Nasdaq, and Sapna C. Patel, Attorney, Division of Market Regulation, Commission, on May 31, 2002.

⁸ 15 U.S.C. 78o-3(b)(6).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

limiting the exposure of order senders to potential inferior execution in a volatile market. In addition, the Commission finds that establishing a five-second minimum life period for both Directed Orders in SuperMontage and for SelectNet orders should help to provide clarity and uniformity of minimum order life parameters across both systems during the phase-in period.⁹ Nasdaq expects to implement both rule changes on July 1, 2002.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-NASD-2002-55) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority,¹¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-14431 Filed 6-7-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46025; File No. SR-NASD-2002-70]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding Replacement Hearing Officers' Authority to Participate in Hearing Panel Decisions

June 4, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 31, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III

below, which Items have been prepared by NASD Regulation. NASD Regulation filed the proposal pursuant to section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation proposes to amend NASD Procedural Rules 9231 and 9233 to clarify a replacement Hearing Officer's authority when he or she is appointed after a hearing has begun or been concluded. The text of the proposed rule is below. Proposed new language is in italics.

9231. Appointment by the Chief Hearing Officer of Hearing Panel or Extended Hearing Panel *or Replacement Hearing Officer*

(a) No Change.

(b) Hearing Panel.

The Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in *paragraph (e) and in Rule 9234 (a), (c), (d), or (e)*. The Hearing Officer shall serve as the chair of the Hearing Panel. Each Panelist shall be associated with a member of the Association or retired therefrom.

(1) through (2) No Change.

(c) through (d) No Change.

(e) *Appointment of Replacement Hearing Officer.*

In the event that a Hearing Officer withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer shall appoint a replacement Hearing Officer. To ensure fairness to the parties and expedite completion of the proceeding when a replacement Hearing Officer is appointed after the hearing has commenced, the replacement Hearing Officer has discretion to exercise the following powers:

(1) *Allow the Hearing Panelists to resolve the issues in the proceeding and issue a decision without the participation of the replacement Hearing Officer in the decision. The replacement Hearing Officer may advise the Hearing Panelists regarding legal issues, and shall exercise the powers of the Hearing Officer under Rule 9235(a), including preparing and signing the*

decision on behalf of the Hearing Panel, in accordance with Rule 9268; or

(2) *Certify familiarity with the record and participate in the resolution of the issues in the case and in the issuance of the decision. In exercising this power, the replacement Hearing Officer may recall any witness before the Hearing Panel.*

* * * * *

9233. Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Hearing Officers

(a) Recusal, Withdrawal of Hearing Officer.

If at any time a Hearing Officer determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, the Hearing Officer shall notify the Chief Hearing Officer and the Chief Hearing Officer shall issue and serve on the Parties a notice stating that the Hearing Officer has withdrawn from the matter. In the event that a Hearing Officer withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer shall appoint a replacement Hearing Officer. *In such a case, the replacement Hearing Officer shall proceed according to Rule 9231(e).*

(b) through (c) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed amendments clarify a replacement Hearing Officer's authority when he or she is appointed after a hearing has begun or been concluded. For various reasons, Hearing Officers are sometimes unable to finish hearings and participate in the issuance of decisions. NASD Code of Procedure Rule 9233 provides that the Chief Hearing Officer shall appoint a replacement Hearing

⁹ Nasdaq intends to introduce SuperMontage through a phased roll-out process where limited numbers of securities will transition to trading in the new SuperMontage environment under new rules, while the remainder will continue to trade in Nasdaq's current environment. Nasdaq represents that, during this transition, both SuperMontage and SelectNet will continue to operate, and a single uniform minimum order cancellation time parameter will be needed to govern both systems.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ NASD Regulation asked the Commission to waive the 30-day operative delay. 17 CFR 240.19b-4(f)(6).

Officer. The rule does not, however, delineate the replacement Hearing Officer's powers when he or she is appointed after a hearing has begun or been concluded. The proposed amendments to Rules 9231 and 9233 clarify a replacement Hearing Officer's authority in such situations.⁶

In part, the proposed amendments respond to an ambiguity in the current rules that was highlighted by the National Adjudicatory Council's ("NAC") recent decision in *U.S. Rica Financial, Inc.*, Complaint No. C01000003 (NAC Oct. 26, 2001). In that case, the Hearing Officer designated as a member of the Hearing Panel left the NASD after the record in the matter had closed but before a decision had been issued. A replacement Hearing Officer was then appointed, and the decision was issued. The decision made clear that the replacement Hearing Officer had not taken part in the decision, which reflected the determinations of the remaining two members of the Hearing Panel. On appeal, the NAC remanded the matter for a rehearing based on the current rules' ambiguity in such a situation.

The proposed amendments would allow, in appropriate cases, the remaining Hearing Panelists to resolve the issues in the proceeding and issue a decision without the participation of the replacement Hearing Officer in the decision. In that scenario, the replacement Hearing Officer may advise the Hearing Panelists regarding legal issues and prepare and sign the decision on behalf of the Hearing Panel.⁷ The amendments, however, also would allow the replacement Hearing Officer the discretion to participate in the resolution of the issues in the case and in the issuance of the decision if he or she certifies familiarity with the record.⁸

⁶ NASD Regulation notes that the Chief Hearing Officer will promptly notify the parties of the appointment of the replacement Hearing Officer. In general, the parties also should be provided an opportunity to comment on the manner in which the matter should proceed.

⁷ Industry representatives have always had a central role in bringing their securities industry expertise to bear on the NASD's disciplinary process. The NASD procedural rules recognize that role by providing that industry representatives shall constitute a majority of each hearing panel. The current amendments also recognize that central role by making clear that, under paragraph (e)(1) of Rule 9231, the remaining Hearing Panel members may, in appropriate circumstances, decide the case and issue the decision with the assistance of the replacement Hearing Officer regarding legal issues and drafting of the decision.

⁸ To certify familiarity with the record, the replacement Hearing Officer must read and consider all relevant portions of the record. NASD Regulation anticipates that, in most cases, certification will be made by written order signed by the replacement Hearing Officer (although

In exercising this power, the replacement Hearing Officer could recall any witness before the Hearing Panel.⁹ The proposed amendments would provide a replacement Hearing Officer with discretion, and thus flexibility, to deal with various situations. That discretion, of course, is not unfettered, as the NAC and the Commission could reverse a replacement Hearing Officer determination based on an abuse of discretion.¹⁰

2. Statutory Basis

NASD Regulation believes that the proposal is consistent with the provisions of sections 15A(b)(6)¹¹ and 15A(b)(8)¹² of the Act. Section 15A(b)(6) of the Act requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect

certification could be made by written correspondence or oral representation transcribed by a court reporter).

⁹ If the replacement Hearing Officer determines to proceed under paragraph (e)(2) of Rule 9231, he or she normally should afford the parties an opportunity to suggest which, if any, witnesses they believe should be recalled. Although the decision to recall witnesses is left to the sound discretion of the replacement Hearing Officer, if the replacement Hearing Officer determines not to recall any witnesses, he or she must have sufficient confidence in the existing record to be able to resolve the case on a fair and reasoned basis.

NASD Regulation recognizes that a witness who is recalled might be unavailable or, if available, might change his or her previous testimony. These potential complications, however, are not unique to the proposed amendments, and hearing panels and courts have a long tradition of dealing with these types of situations. If the replacement Hearing Officer who proceeds under Rule 9231(e)(2) directs that a witness who testified at the hearing be recalled, the party who sponsored the witness will be responsible for producing the witness or establishing that the witness is unavailable. If the party fails to do so, the Hearing Panel may disregard the prior testimony. Where a witness is shown to be unavailable, the replacement Hearing Officer would have to rely on the transcripts of the witness's testimony. Where an available witness is recalled but testifies differently during the subsequent hearing, the parties may impeach the witness with his or her prior inconsistent statement(s). The trier of fact would then take those inconsistencies into account when determining how much weight, if any, to give to the witness's testimony.

¹⁰ For example, depending on the facts and circumstances of the particular case, a replacement Hearing Officer who proceeds under Rule 9231(e)(2) likely would abuse his or her discretion by refusing to recall a witness whose testimony he or she had not heard where such testimony is material and disputed and where the witness is available to testify without undue burden. Conversely, a replacement Hearing Officer likely would not abuse his or her discretion by relying on evidence heard by a predecessor Hearing Officer when the particular testimony is undisputed or immaterial or when a witness has become unavailable.

¹¹ 15 U.S.C. 78o-3(b)(6).

¹² 15 U.S.C. 78o-3(b)(8).

investors and the public interest. Section 15A(b)(8) states, in pertinent part, that the NASD's rules must provide a fair procedure for the disciplining of members and persons associated with members.

NASD Regulation believes the proposed rule change clarifies NASD Procedural Rules 9231 and 9233 with regard to a replacement Hearing Officer's authority to participate in a Hearing Panel's decision. Under the current rules, when a Hearing Officer withdraws, is incapacitated, or otherwise is unable to continue service, the Chief Hearing Officer appoints a replacement Hearing Officer under Rule 9233. That rule, however, presently does not describe the powers of a replacement Hearing Officer who is appointed after a hearing has begun or been concluded. By clarifying replacement Hearing Officers' powers in such situations, NASD Regulation believes the proposed rule change promotes the fair and efficient resolution of disciplinary cases and thus furthers the purposes of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

or otherwise in furtherance of the purposes of the Act.

NASD Regulation has requested that the Commission waive the 30-day operative delay. The Commission finds good cause to waive the 30-day operative delay because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will ensure that the clarifying amendments outlined in this proposed rule change are not needlessly delayed. For these reasons, the Commission finds good cause to waive the 30-day operative waiting period.¹⁵

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-2002-70 and should be submitted by July 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-14523 Filed 6-7-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45997; File No. SR-NASD-2002-58]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc. Relating to Temporary Approval of the Primex Auction System®

May 29, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 30, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed Amendment No. 1 with the Commission on May 28, 2002.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.⁴

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to continue operating Nasdaq's application of the Primex Auction System® ("Primex" or "System"). The System began operating as a Pilot Trading System on December 17, 2001, pursuant to Rule 19b-5 of the Act.⁵ Pursuant to paragraph (f) of Rule 19b-5 of the Act,⁶ Nasdaq is filing this proposed rule change effective immediately so that it can continue

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated May 1, 2002 ("Amendment No. 1"). In Amendment No. 1, Nasdaq removed language under NASD Rule 5013(c)(2) that was inadvertently included in its initial filing. Nasdaq originally removed this language in Amendment No. 1 to Nasdaq's Form PILOT filing for Primex.

⁴ This proposed rule change, absent Amendment No. 1, was previously published in the **Federal Register**. See Securities Exchange Act Release No. 45982 (May 23, 2002). However, the Commission notes that although Amendment No. 1 is dated May 1, 2002, the Commission did not receive Amendment No. 1 until May 28, 2002, after publication of the initial proposed rule change. The Commission now publishes the proposed rule change, as amended by Amendment No. 1, for public comment.

⁵ 17 CFR 240.19b-5.

⁶ 17 CFR 240.19b-5(f).

operating the System until the Commission grants permanent approval. Nasdaq has filed a companion proposed rule change which seeks permanent approval of Primex.⁷ The proposed rule language contained in the companion filing and set forth below is identical and is the same language that governs use of the System today.

5010. NASDAQ Application of the PRIMEX AUCTION SYSTEM®

5011. Definitions

For purposes of this Rule Series, unless the context requires otherwise:

(a) "Application" or "Nasdaq Application" as used in this Rule Series, and "Nasdaq Application of the Primex Auction System" as used throughout the NASD Rules means the voluntary Nasdaq trading service facility that permits NASD member firms, among other things, to submit orders in Primex Eligible Securities to be exposed to a Crowd of Participants in an anonymous, electronic auction format for the purpose of obtaining an execution for their own account or the account of a customer; to have required reports of any resulting trades automatically disseminated to the public and the industry; and to "lock in" these trades as necessary by sending both sides to the applicable clearing agency designated by the Participants involved for clearance and settlement, all in accordance with this Rule Series and other applicable rules and policies of Nasdaq.

(b) "Primex Auction System Participant," "Participant," or "Participant Firm" means a broker-dealer registered with the NASD that, when authorized, can access and participate in the Application for its customers or its own account, consistent with this Rule Series. Participants access the Application through one or more Subscribers associated with that Participant within the Application.

(c) "Subscriber" means a user associated with a Participant who, when authorized, can access and participate in the Application on behalf of that Participant, consistent with this Rule Series. A user also can access and participate directly in the Application on its own behalf, but in the name of a Participant, subject to a sponsored arrangement with that Participant, and consistent with these Rules.

(d) "Firm Administrator" means a Subscriber who, for a particular Participant, is authorized among other things to: (1) monitor and control access

⁷ See Securities Exchange Act Release No. 45983 (May 23, 2002) (publishing SR-NASD-2002-60 for notice and comment).

¹⁵ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁶ 17 CFR 200.30-3(a)(12).

to and participation in the Application by all of that Participant's Subscribers, including establishing Credit Limits for each of the Participant's Subscribers who access and participate in the Application on behalf or in the name of that Participant; and (2) view the status of the Clearing Limits applicable to the Participant overall.

(e) "Nasdaq Supervisor" means the Nasdaq staff responsible for establishing and supervising certain operational functions with respect to the operation of the Application.

(f) "Credit Limits" means the dollar amount of aggregated purchases or sales established within the Application by a Participant's Firm Administrator for each of the Participant's Subscribers which, when reached, causes the Application to: (1) Inhibit any future executions or the entry of future interest for that Subscriber; (2) cancel any orders and withdraw any Indications resident within the Application for that Subscriber; and (3) send a notice to that Subscriber, its Firm Administrator, and the Nasdaq Supervisor. Credit Limits may be established, monitored, and modified by the Firm Administrator on a real-time basis directly through the Application.

(g) "Clearing Limits" means the dollar amount of aggregated purchases and sales (calculated separately and not netted) of all Subscribers, collectively for a Participant, effected through or in the name of that Participant, that is established within the Application for that Participant, which, when reached, causes the Application to: (1) Inhibit any future executions for all Subscribers associated with that Participant; (2) cancel any orders and withdraw any Indications resident within the Application for all Subscribers associated with that Participant; and (3) send a notice to that Participant's Firm Administrator, the Nasdaq Supervisor, and to the clearing broker for that Participant provided that the clearing broker also is a Participant. If the clearing broker is not a Participant in the Application, then the Nasdaq Supervisor will notify the clearing broker that the Clearing Limits have been reached as soon as practicable. Clearing Limits for a Participant may be monitored on a real-time basis by the Participant's Firm Administrator and can be established, monitored, and modified by the Firm Administrator of the Participant's clearing broker, provided the clearing broker also is a Participant. Clearing Limits also can be established and modified by the Nasdaq Supervisor on behalf of the clearing broker.

(h) "Crowd," "Primex Crowd" or "Crowd Participant" means Primex Auction System Participants that, when authorized, can access and participate in the Application consistent with this Rule Series by: (1) Submitting orders to be exposed to other Participants; (2) viewing orders submitted by other Participants; and (3) submitting Responses and Indications for the purpose of interacting with the orders of other Participants.

(i) "Watch List" means the list of Primex Eligible Securities identified by a Crowd Participant for which the Crowd Participant will be notified by Nasdaq electronically when one or more orders in such securities is exposed in an Auction and made available for response by the Crowd.

(j) "Primex Auction Market Maker" means a Participant that, when authorized, may participate in the Application: (1) as a Primex Auction Market Maker consistent with Rule 5020 with respect to those Primex Eligible Securities for which the Participant is registered as a Primex Auction Market Maker; and (2) as a Crowd Participant consistent with Rule 5019 with respect to any Primex Eligible Security.

(k) "Primex Eligible Security" means any security listed on the Nasdaq Stock Market and any exchange-listed security eligible for participation in the Intermarket Trading System.

(l) "Mandatory Eligible Order" means a public customer order, as more fully defined in Rule 5020, that a Primex Auction Market Maker must submit to the System for exposure in order for the Primex Auction Market Maker to maintain its status as such, subject to any exclusions or minimum permissible amount provided therein.

(m) "Market Order" means an order submitted to the Application to purchase or sell a security at the most advantageous price(s) obtainable, without a specified, fixed price.

(n) "Fixed Price Order" means an order submitted to the Application to purchase or sell a security at a specified, fixed price or better.

(o) "Minimum Relative Price Improvement" means a condition that a Participant may attach to a market order consistent with Rule 5014(a), expressed in terms of the minimum relative price improvement required to execute the order. This condition is expressed in terms relative to the best bid (for orders to sell) or best offer (for orders to buy) displayed in the NBBO at the time the order is eligible to be executed against within the Application. Neither the existence nor amount of any Minimum Relative Price Improvement condition is displayed, exposed or communicated to

any Participant when attached to an order.

(p) "Response" means an instruction submitted to the Application by a Participant, for the purpose of responding to an order or orders being exposed to the Crowd, consistent with Rule 5018.

(q) "Predefined Relative Indication" or "PRI" means an instruction that a Participant can submit to the Application for the purpose of responding to an order(s) in an Auction, and which does not contain a specific, fixed price, but is expressed in terms relative to the best bid (for PRIs to buy) or offer (for PRIs to sell) publicly displayed for the security, consistent with Rule 5018. While resident within the Application, PRIs are ranked to respond to incoming orders in relative price/time priority, but are not displayed, exposed or communicated to any other Participant.

(r) "Go-Along Indication" means an instruction that a Participant can submit to the Application for the purpose of responding to an order(s) in an Auction, and which does not contain a specific, fixed price, consistent with Rule 5018. A Go-Along Indication will be triggered to respond to an Auction at a price equal to the best bid (for Go-Along Indications to buy) or best offer (for Go-Along Indications to sell) publicly displayed whenever there has been at least one contemporaneous Crowd execution at such bid or offer, provided there are no PRIs or other orders available to execute against the order(s) in the Auction. While resident within the Application, Go-Along Indications are not displayed, exposed or communicated to any other Participant.

(s) "Auction" means the automated process through which orders in Primex Eligible Securities are exposed to Crowd Participants. Orders for the same security being exposed simultaneously (*i.e.* those which have overlapping exposure periods) are available on an aggregate basis, in whole or in part, for interaction with other Crowd participants, but only during the period of overlapping exposure. An Auction begins when an order is accepted by the Application and exposed to the Primex Crowd, and ends whenever such order(s) (including any orders that subsequently join the Auction in progress) are completely executed or their exposure ceases.

(t) "Public Order" or "Public Customer Order" means an order for the account of a customer, and not for the account of a broker-dealer, regardless of whether the customer is that of the Participant entering the order or another

firm that has routed the customer order to the Participant.

(u) "Professional Order" means an order for the proprietary account of a broker-dealer, regardless of whether the broker-dealer is a market maker or specialist, and regardless of whether it is the Participant's own order or the proprietary order of another broker-dealer routed to the Participant.

(v) "Market Maker Guarantee" means the feature within the Application that allows a Participant registered as a Primex Auction Market Maker to provide an automatic execution against public customer orders it submits to the Application for exposure in an Auction where such orders are not otherwise subject to an execution. The Application will automatically execute any unexecuted balance of the order against that Primex Auction Market Maker, after the Auction exposure period for the order has expired, consistent with Rule 5020. The Market Maker Guarantee shall be provided at a price equal to the best publicly quoted offer price (for orders to buy) or best publicly quoted bid price (for orders to sell) existing for the security at the time when such exposure period for the order has expired, for any amount of shares established by the Primex Auction Market Maker for the order.

5012. Access

(a) The Application shall be available on a voluntary basis to any NASD member in good standing that chooses to register as a Participant in the Primex Auction System. Such registration shall be conditioned upon the Participant's initial and continuing compliance with the following requirements:

(1) Execution of the necessary agreements with Nasdaq or its affiliate;

(2) Membership in, or access arrangement with, a clearing agency registered with the Commission which maintains facilities through which Primex Auction System compared trades may be settled;

(3) Compliance with all applicable rules and operating procedures of Nasdaq (including these rules) and the Commission;

(4) Maintenance of the physical security of the equipment located on the premises of the Participant to prevent the improper use or access to Nasdaq systems, including unauthorized entry of information into the Primex Auction System; and

(5) Acceptance and settlement of each trade that is executed through the facilities of the Primex Auction System, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such

execution by the clearing member on the regularly scheduled clearing date.

(b) Non-NASD members may access the Application in the name of a Participant by becoming a sponsored Subscriber of the Participant, provided the Participant and sponsored Subscriber have executed the necessary agreements with Nasdaq or its affiliate, and the NASD member Participant assumes the responsibilities set forth in paragraph (a) of this Rule 5012 with respect to any activity conducted by the sponsored Subscriber.

(c) The Application may be made available through Nasdaq-provided network(s) via:

(1) Primex Auction System Workstation Service;

(2) An Application Programming Interface ("API"); or

(3) A FIX protocol interface. Certain functionality of the Application also may be made available via Computer to Computer Interface (CTCI).

5013. Order Acceptance and Exposure

(a) Order Types

The Application shall accept the following types of orders in Primex Eligible Securities, subject to any conditions or match parameters attached thereto to the extent permitted by the Application and Rule 5014, and other rules applicable to Participants with respect to the entry of orders. Conditions and match parameters, to the extent attached to an order, are never communicated to any Participant:

(1) Market Orders;

(2) Fixed Price Orders, when the specified price is equal to or between the best bid or offer publicly displayed, or is a buy (sell) order priced higher (lower) than the best offer (bid) publicly displayed. Fixed Price Orders to buy (sell) priced below (above) the best bid (offer) publicly displayed will be rejected.

For example: If the best bid and offer publicly displayed in Nasdaq is \$20-\$20.10, then the Application will accept orders to buy priced at \$20.00 and higher, including orders to buy priced higher than the offer of \$20.10 (although no execution can take place outside of the NBBO prevailing at the time of execution). An order submitted to buy at \$19.95, however, would not be accepted by the Application in this situation and will be returned to the Participant that entered it.

(b) Order Size

The Application will accept orders that are either round lots, or mixed lots. Odd lot orders will not be accepted.

(c) Exposure Times Available

(1) The Application allows Participants to expose orders to the Primex Crowd. Only the size associated with an order is communicated to the Crowd, and only for the time during which the order is available for execution. Crowd Participants may monitor the availability of orders exposed in an auction through the use of their Watch List.

(2) For each Market Order submitted to the Application, a Participant can specify a maximum exposure time of either 0 (i.e., immediate), 15, or 30 seconds.

(3) Fixed Price Orders that are accepted by the Application can only be exposed for an immediate execution, in whole or in part).

5014. Conditions and Match Parameters

(a) For All Participants

Subject to any other rules applicable to Crowd Participants and Primex Auction Market Makers with respect to the entry of orders, any Participant may enter an order with the following condition attached:

Minimum Relative Price Improvement

Market Orders may be submitted with a condition for Minimum Relative Price Improvement. The Minimum Relative Price Improvement established for an order is the minimum amount of price improvement superior to the best bid or offer publicly displayed (as applicable) that the order must receive before it may be executed against in whole or in part by any interest from the Crowd. This condition must be attached before the order is entered into the Application. Such condition may be expressed only in terms relative to the best bid or offer on the opposite side of the market existing at such time when any Indication, Response, or other order is or becomes available to interact with the order in an Auction, as permitted by the Application and this Rule Series. Neither the existence nor amount of any Minimum Relative Price Improvement condition is displayed, exposed or communicated to any Participant when attached to an order. This condition shall not be available for orders submitted solely for the proprietary account of a Nasdaq market maker or CQS market maker (including Primex Auction Market Makers) and not involving a customer order.

For example: An order to buy 500 shares entered into the Application may contain a condition for Minimum Relative Price Improvement requiring that any Indication or Response (or sell order exposed in an Auction and which

is available for a match) provide to that order at least a certain amount (e.g., 3 cents) of price improvement superior to the best offer publicly displayed at such time the Indication, Response or sell order is available to be matched with the order to buy.

(b) For Primex Auction Market Makers Only

A Participant registered as a Primex Auction Market Maker for a particular security is entitled, but not required, to enter customer orders with any of the following match parameters as discussed below. These allow the Primex Auction Market Maker to provide liquidity in addition to that which may be provided by the Crowd. The match parameters contained in this paragraph are only available to Participants who are Primex Auction Market Makers, and only for those securities for which they are so registered. Neither the existence nor type of any match parameter associated with an order is displayed, exposed or communicated to any other Participant:

(1) Two Cent Match

A Participant registered as a Primex Auction Market Maker for a particular security may enter an order with the Two Cent Match parameter.

(A) If there is interest from the Crowd that can satisfy the order, the order entered with the Two Cent Match will be executed against such interest by the Crowd during its exposure, provided that such Crowd interest offers to provide price improvement greater than two cents superior to the best quote publicly displayed in the NBBO at the time such Crowd interest is available.

Note: Because the system will never execute an order at a price outside of the NBBO, any Crowd interest offering an amount of price improvement that would potentially be outside of the NBBO will be executed, if matched with an order, at a price bounded by the NBBO, in effect adjusting the execution price to allow for the maximum amount of price improvement within that NBBO without trading through the NBBO at that time. As a result, it is possible that an order subject to the Two Cent Match parameter may be matched with interest from the Crowd, and not the Primex Auction Market Maker that entered it, notwithstanding the fact that the actual execution price results in price improvement of two cents or less. This can happen, for example, where there is Crowd interest available that is offering three cents of relative price improvement, but the Application causes the actual execution price to be equal to two cents of price improvement, due to a prevailing NBBO spread of two cents at the time of execution.

(B) If there is interest from the Crowd that can satisfy the order but such

Crowd interest would only offer price improvement of two cents or less in relation to the best quote publicly available, then this will immediately cause the Application to execute the entire order against the Primex Auction Market Maker that entered it, and not against such Crowd interest, thereby allowing the execution of that order to be retained by the Primex Auction Market Maker. In this situation, the entire order will be executed with that Primex Auction Market Maker at the best price the Crowd interest would have otherwise provided, regardless of the size associated with such Crowd interest.

(C) Any unexecuted balance of the order remaining at the end of its exposure will be executed against the Primex Auction Market Maker. With respect to Market Orders, this execution price will be at the best quote then publicly displayed. With respect to Fixed Price Orders, the execution price will be the price specified in the Fixed Price Order, unless such price is outside the best quote publicly displayed, in which case the execution price will be at the best quote publicly displayed in the NBBO.

(D) A Primex Auction Market Maker may enter customer orders of any size with the Two Cent Match parameter.

(E) A Primex Auction Market Maker that enters a Market Order with the Two Cent Match parameter may elect immediate ("zero seconds"), 15 or 30 second maximum exposure duration for that order. A Fixed Price Order can be exposed only for an immediate "zero second" auction.

(2) 50% Match

A Participant registered as a Primex Auction Market Maker for a particular security may enter an order a 50% Match parameter.

(A) Orders entered with the 50% Match parameter will be executed against any interest by the Crowd that satisfies the order during its exposure at the price(s) and size of such Crowd interest, for no more than 50% of the order. Any execution with the Crowd will immediately cause the Application to provide the order with an additional execution of like size and price against the Primex Auction Market Maker that entered the order.

(B) Any unexecuted balance of the order remaining at the end of its exposure will be automatically executed against the Primex Auction Market Maker. With respect to Market Orders, this execution price will be at the best quote then publicly displayed. With respect to Fixed Price Orders, the execution price will be at the price

specified in the Fixed Price Order, unless such price is outside the best quote publicly displayed, in which case the execution price will be at the best quote publicly displayed.

(C) A Primex Auction Market Maker may enter customer orders of any size with the 50% Match parameter.

(D) A Primex Auction Market Maker that enters a Market Order with the 50% Match parameter may elect immediate ("zero seconds"), 15 or 30 second maximum exposure duration for that order. A Fixed Price Order can be exposed only for an immediate "zero second" auction.

For example: The best bid and offer publicly displayed for a security is \$20-20.10. A Primex Auction Market Maker for that security enters into the Application a Market Order to buy 2,000 shares for a customer and selects the 50% Match Parameter. The Participant selects an exposure time of 30 seconds. During its exposure, the order elicits the following executions by other Crowd Participants (which could be in the form of Indications, Responses, or contraside orders to sell): 500 at \$20.04, and 200 at \$20.05. The Application will execute these transactions, and immediately match each one as they occur by executing an additional 500 and 200 shares, at \$20.04 and \$20.05, respectively, against the Primex Auction Market Maker entering the order. If there is no other interest from the Crowd at the end of the 30 second exposure period, the Application will cause the remaining balance of 600 shares to be automatically executed against the Primex Auction Market Maker entering the order at the best offer publicly displayed at that time. Assuming the best offer publicly displayed is still \$20.10 at this time, this would result in the Primex Auction Market Maker selling the balance of 600 shares to the customer at \$20.10.

(3) Block Facilitation Match

A Participant registered as a Primex Auction Market Maker for a particular security may enter an order with a Block Facilitation match parameter, provided the order is for at least 10,000 shares. The Primex Auction Market Maker may elect to expose the order in an Auction for a maximum of 0, 15, or 30 seconds: Any Crowd interest that executes against the order during the selected exposure period, up to a maximum of 50% of the order size, will be immediately matched with an execution of like size and price against the entering Participant until the order is fully executed. If any unexecuted portion remains at the end of the exposure period, it will be automatically

executed against the entering Participant. With respect to Market Orders, the execution price will be the then existing best offer (for orders to buy) or best bid (for orders to sell) publicly displayed. With respect to a Fixed Price Order, the execution price will be the price specified in the Fixed Price Order, unless such price is outside of the best quote publicly displayed, in which case the execution price will be at the best quote publicly displayed.

For example: The best bid and offer publicly displayed is \$20–20.10. A Participant enters into the Application an order to buy a block of 10,000 shares for a customer and selects the Block Facilitation Match Parameter. The Participant selects an exposure time of 15 seconds. During its exposure, the order elicits the following executions by other Crowd Participants (in the form of Indications, Responses, or contra-side orders to sell): 1000 at \$20.05, and 2000 at \$20.07. The Application will execute these transactions, and immediately match each one as they occur by executing an additional 1000 and 2000 shares, at \$20.05 and \$20.07, respectively, against the Participant entering the block order. If there is no other interest from the Crowd at the end of the 15 second exposure period, the Application will cause the remaining balance of 4000 shares to be automatically executed against the Participant entering the block order at the best offer publicly displayed at that time. Assuming the best offer publicly displayed is still \$20.10 at this time, this would result in the Participant selling the balance of 4000 shares to the customer at \$20.10.

(4) Clean Cross

A Participant registered as a Primex Auction Market Maker for a particular security may enter a Clean Cross order for the accounts of two separate customers where the order represents both sides of a cross for at least 10,000 shares to be exposed to the Crowd in an immediate, zero second Auction. The two sides will be executed against each other at the midpoint of the best bid and offer publicly displayed unless superior-priced interest within the Application breaks up one or both sides of the cross. In order to break up a side of the cross, there must be Crowd contra-side interest resident within the Application (*e.g.*, resident PRIs) that totals at least 10,000 shares in the aggregate at a price or prices that are all superior to the bid-ask midpoint by at least the nearest whole cent. Any portion of a side that is not executed against either the opposite side of the Clean Cross order or contra-side

interest resident within the Application will be returned unexecuted.

5015. Public and Professional Orders

All orders submitted to the Application shall be identified as either a Public Order or a Professional Order, as those terms are defined in Rule 5011. This Public or Professional status is not displayed, exposed or communicated to any other Participant in the Application, but is used to determine whether an order is available to interact with the Response or Indication of a Crowd Participant. As indicated in Rule 5018(e), a Participant that responds to orders in an Auction can choose whether its Responses and Indications interact with all orders (both Public and Professional Orders) or just Public Orders. When entering an order, however, a Participant entering an order does not have the ability to select or control whether Public or Professional interest may interact with the order.

5016. Option to Route Orders Outside of the System After Exposure in the Application

(a) All Market Orders submitted to the Application shall include an identifier as to whether any unexecuted balance, after the order is exposed to the Crowd, should be forwarded to SuperSoesSM, in the case of a Nasdaq security, or to ITS/CAES, in the case of an exchange-listed security, or whether the order should be returned to the entering Participant. This option to route orders outside of the Application is available for Market Orders only. Orders submitted to the Application with a specified, fixed price cannot be automatically forwarded to Nasdaq's other execution systems. Routing identifiers are not displayed, exposed or communicated to any other Participant in the Application.

(b) With respect to exchange-listed securities, only Primex Auction Market Makers (which also must be ITS/CAES market makers with respect to these securities, as required by these rules) may elect to have Market Orders in exchange-listed securities routed out to ITS when there is a balance remaining following exposure in the System, provided, however, that customer orders so routed must first be exposed in the Application for at least 15 seconds. In addition, to the extent the best price publicly quoted at that time is available within Nasdaq's CAES system, regardless of whether the same price also is being publicly quoted by another ITS market center, such orders designated for routing to ITS/CAES will be delivered to CAES for execution up to the size publicly quoted by CAES

participants and will not be routed out to another market center through ITS.

5017. Short Sales

Participants are responsible for complying with applicable short sale rules when using the Application. No Participant shall submit to the Application an order for a security that, if executed, would result in a "short sale" as that term is defined in Exchange Act Rule 3b–3, unless the transaction would be exempt from, or otherwise permissible under, the requirements of NASD Rule 3350 or Exchange Act Rule 10a–1, as applicable.

5018. Responses and Indications

(a) General—Participants may submit Responses and Indications to the Application, consistent with this Rule Series, for the purpose of interacting with orders in an Auction, as described herein. Responses and Indications are not displayed, exposed or communicated to any Participant, except to the extent they result in an execution with an order. Responses and Indications cannot execute against other Responses or Indications.

(b) Responses—Responses are instructions submitted to the Application by Participants to interact with available orders exposed in an Auction. Responses may be either a Fixed Price Response (*e.g.* buy 1000 at \$20) or a Relative Priced Response (*e.g.*, buy 1000 at the bid plus 3 cents). All Responses must be entered in an amount of at least one round lot, but also may be for a mixed lot.

(c) Indications—Indications are instructions, with the characteristics set forth below, submitted to the Application by Participants to interact with orders exposed in an Auction. An Indication may be a Predefined Relative Indication ("PRI") or a Go-Along Indication.

(1) Predefined Relative Indications

(A) PRIs can be submitted to the Application for the purpose of automatically responding to an Auction at a point in time when one or more orders becomes available. PRIs have no specific, fixed price, but are expressed at time of entry in terms relative to the best bid or offer publicly displayed at such time when the Application activates the PRI against orders in an Auction. While resident within the Application, PRIs are ranked in relative price/time priority among all other PRIs resident within the Application and any same-side orders currently being exposed in an Auction, as indicated in paragraph (e) of this Rule. Neither the existence nor terms of a PRI are

displayed, exposed or communicated to any other Participant while resident in the Application. When activated by the Application, a PRI will match against orders in an Auction at a price equal to the best bid (for PRIs to buy) or offer (for PRIs to sell) publicly displayed at that time in the NBBO, plus or minus (respectively) the relative price term associated with that PRI; provided that such price also satisfies any applicable condition associated with the order(s) in the Auction to which it is responding.

(B) At the time of its original entry, each PRI submitted to the Application must be for the following share amounts:

(i) NBBO PRIs must be for at least 3000 shares upon entry;

(ii) NBBO ± 01 or $.02$ must be for at least 2000 shares upon entry;

(iii) NBBO ± 03 or greater must be for at least 1000 shares upon entry.

(C) The Application will accept a PRI with the following amounts of relative price improvement:

(i) If the NBBO, at the time the PRI is submitted, has a spread equal to three cents or more, the PRI will be accepted if it offers any amount of price improvement between zero and the actual NBBO spread prevailing at that time;

(ii) if the NBBO, at the time the PRI is submitted, has a spread that is less than three cents, the PRI may offer any amount of price improvement between zero and three cents.

(D) Participants may elect to limit their exposure when using PRIs by entering a Per Auction Maximum size for each PRI submitted. The Per Auction Maximum represents the maximum share amount of a PRI available for a single Auction. It cannot be greater than the size of the PRI, but is subject to the same minimum values applicable to the original entry of a PRI with that relative price term. Once the Per Auction Maximum, if any, for a PRI is exhausted, the Participant will have 15 seconds to withdraw the PRI, during which time no further executions against that PRI will occur. In the absence of a withdrawal during this period, the Application will restore the PRI up to the Per Auction Maximum and the PRI will become available again for any subsequent Auctions to the extent there is an eligible balance remaining for that PRI. For purposes of relative price/time priority, the restored PRI will receive a new timestamp within the Application.

(E) Participants may select a maximum residency period of one (1) or five (5) days, during which time the PRI remains resident within the Application unless fully executed or withdrawn. The Application will automatically

withdraw any PRIs that remain at the end of the applicable residency period.

(2) Go-Along Indications

(A) A Go-Along Indication can be submitted to the Application for the purpose of automatically responding in an Auction at a point in time when one or more orders becomes available in an Auction and there has been at least one other contemporaneous Crowd execution within the Application at the NBBO; provided there are no PRIs available or orders being exposed in an Auction (executions resulting from a Primex Auction Market Maker Guarantee do not trigger Go-Along Indications). Go-Along Indications have no specific, fixed price when entered, but will match against orders at a price equal to the best bid (for Go-Along Indications to buy) or best offer (for Go-Along Indications to sell) that exists at such time the Go-Along Indication is activated. While resident within the Application, Go-Along Indications are not displayed, exposed or communicated to any other Participant.

(B) At the time of its original entry, each Go-Along Indication submitted to the Application must be for at least 10,000 shares.

(C) Participants may select a maximum residency period of one (1) or five (5) days, during which time the Go-Along Indication remains resident within the Application unless fully executed or withdrawn. The Application will automatically withdraw any Go-Along Indications that remain at the end of the applicable residency period.

(d) Executions Bounded by the NBBO—The Application will never execute an order outside of the NBBO prevailing at the time of execution. Indications such as PRIs that potentially would offer an amount of price improvement that could result in an execution outside of the NBBO will be priced at the NBBO if matched with an order, in effect providing the maximum amount of price improvement permissible within the NBBO at that time.

(e) Relative Priority of Predefined Relative Indications and Orders.

(1) While resident within the Application, Predefined Relative Indications are ranked in relative price/time priority while they await activation against incoming orders notwithstanding that PRIs have no specified, fixed price associated with them. For example, among resident PRIs for the same security on the same side of the market, PRIs offering greater relative price improvement are ranked ahead of PRIs offering less relative price

improvement. PRIs offering the same relative amount of price improvement are ranked by time of entry (or the time the Indication was restored after exhausting its Per Auction Maximum).

(2) Market Orders being exposed within the Application also are ranked in relative price/time priority during the life of their exposure, notwithstanding that Market Orders have no specified, fixed price associated with them. For example, among Market Orders in the same security being exposed on the same side of the market, those orders not seeking any relative price improvement are ranked ahead of orders seeking some relative amount of Minimum Relative Price Improvement. Orders seeking a greater relative amount of Minimum Relative Price Improvement are ranked behind orders seeking a lesser relative amount of Minimum Relative Price Improvement. Orders seeking the same relative amount of price improvement are ranked by time of entry.

(3) Among and between Indications and orders on the same side of the market, the relative price/time priorities for each are integrated, based on their respective ranking relative to the best bid and offer publicly displayed. The Application recalculates and maintains these relative priorities whenever there is a change in the best bid or offer prices publicly displayed in the NBBO. Market Orders that are matched with other Market Orders being auctioned are executed at the midpoint of the best bid and offer publicly displayed, provided that such price satisfies any condition for Minimum Relative Price Improvement associated with each order.

(f) Responding to All Orders or Public Orders Only—All Responses and Indications shall include an identifier as to whether it may interact with either:

(1) All available orders (both Public Orders and Professional Orders); or (2) Public Orders only. Such identifier is not displayed, exposed or communicated to any Participant at any time, but is used by the Application for determining the universe of orders with which the Response or Indication may interact.

5019. Crowd Participation

(a) There are two levels of participation in the Application: Crowd Participant and Primex Auction Market Maker. Becoming a Participant in the Application automatically entitles the Participant to be a Crowd Participant for any security, allowing participation consistent with this Rule 5019. A Crowd Participant may also choose to register as a Primex Auction Market Maker, but

only on a security-by-security basis, as set forth in Rule 5020, and only consistent with the requirements for participation under that Rule.

(b) Unless otherwise specified, a Crowd Participant may enter orders, Indications, and Responses in any Primex Eligible Security at any time, for its own account or for the account of a customer. Crowd Participants have no mandatory obligation to submit to the Application any order at any time.

5020. Market Maker Participation

(a) A Participant may register as a Primex Auction Market Maker in one or more Primex Eligible Securities, and may maintain such registration while in compliance with the requirements of this Rule. Unless otherwise specified, a Primex Auction Market Maker is automatically subject to the same rights and obligations of Crowd Participants pursuant to Rule 5019 with respect to customer orders in any and all Primex Eligible Securities. In addition, a Primex Auction Market Maker is entitled, but not obligated, to use either of the following features of the Application when submitting customer orders, but only with respect to those securities in which it is currently registered as a Primex Auction Market Maker:

(1) A Primex Auction Market Maker, for securities in which it is registered as such, may submit customer orders to the Application with any of the available match parameters that enable the Primex Auction Market Maker to exercise certain matching rights facilitated by the Application, as set forth in Rule 5014(b). When associated with an order, these match parameters are not displayed, exposed or communicated to any other Participant; or

(2) A Primex Auction Market Maker, for securities in which it is registered as such, may submit customer orders to the Application with a Market Maker Guarantee enabling the Primex Auction Market Maker to guarantee an execution within the Application where such orders are not otherwise subject to an execution as a result of either satisfactory Crowd interest or matching rights processing elected by the Primex Auction Market Maker pursuant to Rule 5014(b) for the order.

(i) Public customer orders of any size are eligible for the Market Maker Guarantee. The Application will facilitate the Market Maker Guarantee by automatically executing any unexecuted balance of the order against the Primex Auction Market Maker that submits the order, after the Auction exposure period for the order has expired.

(ii) The Market Maker Guarantee is automatically provided at a price equal to the best publicly quoted offer price (for orders to buy) or best publicly quoted bid price (for orders to sell) existing for the security at the time when such exposure period for the order has expired (including "zero second" auctions), for any amount of shares established by the Primex Auction Market Maker for the order.

(b) With respect to each security in which a Participant is registered as a Primex Auction Market Maker, the Participant shall:

(1) If the security is a Nasdaq-listed security, be registered as a Nasdaq market maker in such security (or become so registered), and at all times comply with all applicable NASD rules and interpretations relating to Nasdaq market makers, including the requirement to enter and maintain two-sided quotations in Nasdaq for such security, subject to the excused withdrawal procedures set forth in Rule 4619;

(2) If the security is an ITS/CAES eligible security, be registered as an ITS/CAES Market Maker (or become so registered) in such security, and at all times comply with all applicable NASD rules and interpretations relating to ITS/CAES Market Makers, including the requirement to enter and maintain two-sided quotations in CQS for such security, subject to the excused withdrawal procedures set forth in Rule 6350;

(3) submit to the Application a minimum of 80% * of the number of its

* The 80% test will be applied on a quarterly basis, and will be phased in as follows: For the calendar quarters commencing on October 1, 2001; January 1, 2002; April 1, 2002; and July 1, 2002, any participant may register in any eligible security as a Primex Auction Market Maker and maintain that status during such calendar quarters without regard to the percentage of its orders it submits to the System for such security during that time, provided it also satisfies all other requirements of a Primex Auction Market Maker pursuant to these rules.

Beginning with the calendar quarter that commences on October 1, 2002, a participant previously registered as a Primex Auction Market Maker for a particular security may maintain its status as such until December 31, 2002 only if it submitted at least 50% of its Mandatory Eligible Orders during the calendar quarter that commences on July 1, 2002 (or during such portion of the calendar quarter that commences on July 1, 2002 in which the participant was so registered if the participant registered in mid quarter), provided it also satisfies all other requirements of a Primex Auction Market Maker pursuant to these rules. A participant that is newly registering as a Primex Auction Market Maker for a particular security any time after the start of the calendar quarter that commences on October 1, 2002 may maintain its status as such until the end of the calendar quarter in which it registered without regard to the percentage of its orders it submits to the System for such security during that time.

Beginning with the calendar quarter that commences on January 1, 2003, and each calendar

Mandatory Eligible Orders (including customer orders of another broker-dealer that has directed such orders to the Participant) as soon as practicable upon receipt by the Participant, for the purpose of exposing such orders to the Primex Crowd. Mandatory Eligible Orders do not include:

(A) any customer order that is greater than 1099 shares at origination, except that nothing in these rules prohibits a Participant from submitting orders of greater size at any time;

(B) any customer order that, when initially received by the Participant, is a Fixed Price Order with a specified price that is not eligible for acceptance by the Application because it is priced outside the NBBO and is not otherwise marketable pursuant to Rule 5013(a)(2), regardless of whether or not the order becomes eligible for acceptance and exposure at a subsequent point in time;

(C) any customer order placed by a customer who authorizes the Participant to not expose the order, either at the time the order is placed or prior thereto pursuant to an individually negotiated agreement with respect to such customer's orders;

(D) any customer order that is an odd lot order (e.g., less than 100 shares);

(E) any customer order to be executed outside of the hours of operation of the Application; or

(F) any other order that would not fall within the definition of the term "covered order" as defined in Exchange Act Rule 11Ac1-5(a)(8).

(4) not attach a condition for Minimum Relative Price Improvement to any order submitted to the Application solely for its own principal account and not involving a customer order.

5021. Anonymity, Execution, Reporting, and Clearing

(a) Anonymity—The Application will process all activity among Participants on an anonymous basis until the end of the day. After facilitating an execution, the Application will send an execution report to all Participants involved as soon as practicable. The execution report will indicate the details of the transaction, but will not contain the identity of the contra-party. At the end of each trading day, the actual contra-

quarter thereafter, a participant previously registered as a Primex Auction Market Maker for a particular security may maintain its status as such until the end of that calendar quarter only if it submitted at least 80% of its Mandatory Eligible Orders during the previous calendar quarter (or during the portion of such previous calendar quarter in which it was so registered if the participant registered in mid quarter), provided it also satisfies all other requirements of a Primex Auction Market Maker pursuant to these rules.

party for executions obtained within the Application will be made available to the Participants involved through Nasdaq's systems. For regulatory and other necessary purposes, the NASD and Nasdaq will have the ability to determine the identity of the actual contra-parties at any time.

(b) Tape Reporting and Clearing—Matches within the Application are executed and reported through Nasdaq systems for public tape reporting and forwarding to NSCC for clearing, where necessary. Participants (or their clearing brokers) are the parties responsible for the clearance and settlement of all trades executed through the Application. Once a transaction is executed, Participants do not have the ability within the Application to modify or reallocate any portion of the execution to a clearing broker other than the clearing broker that the Application associates with the Participant at the time of execution. Neither the NASD (and its affiliates) nor any operator or administrator of the Primex Auction System shall be directly or indirectly a party to any transaction entered into, matched, or otherwise effected through the Application, notwithstanding that, for the remainder of the trading day after a transaction, the actual contra-parties have not had their identities disclosed to each other by the Application.

5022. Credit Limits and Clearing Limits

(a) Credit Limits—The Application shall allow a Participant's Firm Administrator to establish Credit Limits for each of its associated Subscribers, including sponsored Subscribers, on an individual Subscriber basis. The limits are established as a dollar amount of aggregated purchases or sales which, when reached, causes the Application to: (1) Inhibit any future executions or the entry of future interest for that Subscriber; (2) cancel any orders and withdraw any Indications resident within the Application for that Subscriber; and (3) send a notice to that Subscriber, its Firm Administrator, and the Nasdaq Supervisor. Credit Limits may be monitored and modified by the Firm Administrator on a real-time basis directly through the Application.

(b) Clearing Limits—The Application shall allow a Participant's clearing broker to establish Clearing Limits within the Application for the Participant on a firm-wide basis. The limits are established as a dollar amount of both purchases and sales (calculated separately, and not netted) of all Subscribers, collectively for a Participant, effected within the Application through or in the name of

that Participant. When the Clearing Limits for a Participant are reached, the Application will: (1) Inhibit any future executions for all Subscribers associated with that Participant; (2) cancel any orders and withdraw any Indications resident within the Application for all Subscribers associated with that Participant; and (3) send a notice to that Participant's Firm Administrator, the Nasdaq Supervisor, and to the clearing broker for that Participant provided that the clearing broker also is a Participant. Clearing Limits for a Participant may be monitored on a real-time basis by the Participant's Firm Administrator and can be established, monitored, and modified by the Firm Administrator of the Participant's clearing broker, provided the clearing broker also is a Participant. If the clearing broker is not a Participant in the Application, then the Nasdaq Supervisor will notify the clearing broker that the Clearing Limits have been reached as soon as practicable. Clearing Limits also can be established and modified by the Nasdaq Supervisor on behalf of the clearing broker.

5023. Hours of Operation

(a) The Application is available for executing securities transactions during regular Nasdaq trading hours whenever there is a free and open quote (i.e., not locked or crossed), subject to the general authority and regulatory responsibilities of Nasdaq or its affiliates in operating the Application as a facility of Nasdaq or its affiliate (including but not limited to its authority to implement trading halts in one or more securities due to regulatory reasons, market-wide emergencies, and system malfunctions).

(b) Nasdaq may permit certain functionality of the Application to be available outside of the time period during which securities transactions may be effected through the Application, including but not limited to, the monitoring, entering, canceling, withdrawing, or modifying resident Indications, Credit Limits, or Clearing Limits.

5024. Limitation of Liability

(a) Neither Nasdaq, the NASD (including their affiliates), Primex Trading N.A., L.L.C. (including its affiliates) nor any other operator, licensor, or administrator (including their affiliates) of the Nasdaq Application of the Primex Auction System shall have any liability for any loss, damages, claim or expense arising from or occasioned by any inaccuracy, error or delay in, or omission of or from: (1) The Nasdaq Application; or (2) the collection, processing, reporting or

dissemination of any information derived from the Nasdaq Application, resulting either from any act or omission by Nasdaq or any affiliate, or any operator, licensor, or administrator of the Nasdaq Application or from any act, condition or cause beyond the reasonable control of Nasdaq or any affiliate, operator, licensor or administrator of the Nasdaq Application, including, but not limited to, flood, extraordinary weather conditions, earthquake or other act of nature, fire, war, insurrection, riot, labor dispute, accident, action of government, communications or power failure, or equipment or software malfunction. If a Participant that enters, authorizes its Subscribers (including sponsored Subscribers) to enter, or is authorized by other Participants to enter orders, Responses, or Indications that result in a transaction through the Application fails to perform its settlement or other obligations under the terms of such transaction, the NASD (and its affiliates) and Primex Trading N.A., L.L.C. (and its affiliates) shall have no liability for such failure to settle.

(b) Neither Nasdaq, the NASD (including their affiliates), Primex Trading N.A., L.L.C. (including its affiliates) nor any other operator, licensor, or administrator (including their affiliates) of the Nasdaq Application of the Primex Auction System makes any express or implied warranties or conditions to Participants or their associated Subscribers (including sponsored Subscribers) as to results that any person or party may obtain from the Nasdaq Application for trading or for any other purpose, and all warranties of merchantability or fitness for a particular purpose or use, title, and non-infringement with respect to the Nasdaq Application are hereby disclaimed.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Primex Auction System is a facility of Nasdaq that has been operating as a Pilot Trading System, as defined in paragraph (c)(2) of Rule 19b-5 of the Act.⁸ As such, Nasdaq was not required to file a proposed rule change under Rule 19b-4 of the Act⁹ as long as the System maintained its status as a Pilot Trading System. Under paragraph (c)(2) of Rule 19b-5 of the Act, a system must comply with three criteria to maintain its status as a Pilot Trading System.¹⁰ One such criteria is that, for each security traded in the System, the System cannot trade more than one percent of the average daily consolidated trading volume of any such security, during at least two of the last four consecutive calendar months. Nasdaq represents that Primex has exceeded this threshold for many securities. Nasdaq also represents that while not all eligible securities have been phased in as of this date, Primex has already executed approximately 1.7 million trades representing almost 500 million shares since it began operation just over four months ago. Therefore, Nasdaq files this proposed rule change to continue operating the System until the Commission grants permanent approval.

Generally, Nasdaq states that Primex is a hybrid system that combines an extended, electronic auction mechanism with the speed and liquidity of Nasdaq's competing market maker environment.¹¹ In a traditional auction market model, market participants gather in a "crowd" at a physical location to bid for incoming orders. In addition, most auction markets employ a single specialist that manages trading in a security and supplies liquidity

when there is no buying or selling interest in the crowd.

Primex automates many of these elements. By facilitating an "electronic crowd," not bound by the physical limitations of space or the number of persons that can be at any one place at a given time, the System can provide the benefits of an auction model on a larger and more efficient scale. By further combining this within a competitive, multi-dealer structure that has been Nasdaq's hallmark, Nasdaq believes it can make available a greater amount of liquidity than would be available in a market with only one provider of capital. The result of this combination and automation, Nasdaq believes, is a market-based solution for providing price improvement opportunities and enhanced liquidity.

The following is a brief overview of how the System typically will operate. Additional details on the System and its tools can be found within the rules of the System, the Form PILOT and the proposing release seeking permanent approval of the System.¹²

A customer sends an order to his or her broker, who, in turn, can forward it to the System. The System is voluntary. Once an order is submitted, an auction for that order commences. Through a unique mechanism, the order is exposed to the System's electronic crowd, which can be composed of market makers, proprietary traders, institutions, ECNs and even the orders of other customers. The System's electronic crowd is open to any NASD member (or their customers, through a sponsored arrangement), and thus the universe of participants who may have access to these orders is very broad. Using the System's auction response tools, crowd participants anonymously bid for the order at prices at or within the parameters of the National Best Bid and Offer ("NBBO"). The order will be executed if an appropriate match is found in the electronic crowd or if the participant submitting the order provided an execution guarantee. The types of orders that can be submitted and the System's response tools are specified in the above rules and are generally described below.

Primex is available to any NASD member and other entities members choose to sponsor. To access the System, a member must be in good standing and have executed the necessary agreements with Nasdaq. Members granted access to the System are referred to as Primex Auction System Participants ("Participants"), and can access the facility for their

customers or for themselves.

Participants in the System are classified as either Primex Auction Market Makers ("PAMMs") or Crowd Participants.

The rights and obligations of each class of Participant are specified in the rules. Generally, however, for any security eligible for trading in the System, Crowd Participants can: View all orders exposed in the System; interact with any order put to auction in the System by responding to auctions; submit orders to be put to auction; and trade as principal, agent, or riskless principal.

PAMMs have certain obligations when they participate in the System. With respect to any security eligible for trading in the System for which a Participant is registered as a PAMM, it must: Maintain a two-sided quote in Nasdaq (or Nasdaq's InterMarket for CQS securities) with respect to any security for which it is registered as a PAMM, and otherwise be in compliance with all applicable NASD rules; and submit to the System a minimum percentage¹³ of its Mandatory Eligible¹⁴ public customer orders (including customer orders of another broker-dealer that directs such orders to the PAMM) for those securities in which it is registered as a PAMM.

PAMMs have the same privileges as Crowd Participants, but because they have certain obligations, PAMMs also have additional privileges. PAMMs are entitled but not obligated to: Exercise certain "matching rights" that allow a PAMM to commit capital to its customer orders in conjunction with the auction exposure process; provide execution guarantees within the System for its own customer orders submitted; and use certain types of orders that permit the PAMM to facilitate block trades and "clean crosses." PAMMs also are entitled to share in transaction revenue paid by other Participants when those other Participants execute against a PAMM's customer orders.

The System accepts unpriced market orders, as well as orders that have specified, fixed prices that are marketable or priced between the NBBO. Orders can be submitted in any round lot or mixed lot, but odd lot orders are not accepted. The System is not an ECN Display Alternative under the Order Handling Rules¹⁵ because it

¹³ See NASD Rule 5020.

¹⁴ See NASD Rules 5011 and 5020.

¹⁵ The SEC's Quote Rule, Rule 11Ac1-1, and Limit Order Display Rule, Rule 11Ac1-4, together are commonly referred to as the Order Handling Rules. Specifically, the System is not an ECN Display Alternative under paragraph (c)(5)(ii) of

⁸ 17 CFR 240.19b-5(c)(2).

⁹ 17 CFR 240.19b-4.

¹⁰ Pursuant to Rule 19b-5(c)(2) of the Act, to qualify as a Pilot Trading System, a system must: (1) Be in operation for less than two years; (2) with respect to each security traded on such Pilot Trading System, during at least two of the last four consecutive calendar months, has traded no more than one percent of the average daily trading volume in the United States; and (3) with respect to all securities traded on such Pilot Trading System, during at least two of the last four consecutive calendar months, has traded no more than 20 percent of the average daily trading volume of all trading systems operated by the self-regulatory organization. 17 CFR 240.19b-5(c)(2).

¹¹ A detailed description of the System is contained in the Form PILOT and the companion proposed rule change, as well as the rules.

¹² See *supra* note 7.

does not display limit orders. Fixed price orders are eligible only for "immediate or cancel" treatment, whereas Participants can choose the duration for which their market orders will be exposed.

Participants also have the option to specify that the balance of an unexecuted order be returned to them or forwarded to other Nasdaq systems for execution. Participants must indicate their preference upon submission of an order to the System. A Participant's preference is not displayed, exposed or communicated to any other Participant.

Another feature of the System is that it processes all activity among Participants on an anonymous basis until the end of the trading day, at which time the counterparties' identities are revealed to each other. Nasdaq, however, has the ability to determine the identity of the parties at any time.

In all other aspects, trades executed within the System are reported and settled using ACT, just as any other trade executed using Nasdaq systems. Trades are reported to the public tape, included in ACT's risk management features, and forwarded to DTCC for clearing, if necessary. The System itself provides additional risk management controls through which Participants and their clearing firms can closely monitor and control their exposure specifically with respect to System activity, both at an individual subscriber/user level, as well as across an entire firm.

(2) Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of sections 15A(b)(6)¹⁶ and 11A(a)(1) of the Act.¹⁷ Section 15A(b)(6) of the Act¹⁸ requires the rules of the NASD to be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 11A(a)(1) of the Act¹⁹ sets forth findings

Rule 11Ac1-1 and paragraph (c)(5) of Rule 11Ac1-5.

¹⁶ 15 U.S.C. 78o-3(b)(6).

¹⁷ 15 U.S.C. 78k-1(a)(1).

¹⁸ 15 U.S.C. 78o-3(b)(6).

¹⁹ 15 U.S.C. 78k-1(a)(1).

of Congress that new data processing and communications techniques create opportunity for more efficient and effective market operations.

Nasdaq believes its application of Primex is consistent with the NASD's obligations under the Act, as well as the finding of Congress, because the System provides members with an additional electronic, execution system, which is designed to provide members with flexibility in executing orders and the opportunity to obtain price improvement. Nasdaq states that the System is a hybrid that combines an extended, electronic auction mechanism with the speed and liquidity of Nasdaq's competing market maker environment. Nasdaq believes that the System can improve on the traditional auction market model by automating many of its elements, including the trading crowd, but will not be bound by physical limitations of space or the number of persons that can be in one physical location at any given time. Nasdaq believes this attribute, combined with a multiple market maker structure, provides an opportunity for enhanced liquidity.

Nasdaq states that another attribute of the System is that all orders may be exposed to a wider audience and thus have the opportunity to obtain price improvement. This provides for order interaction and can facilitate best execution. At the same time, however, Nasdaq believes the System can continue to provide PAMMs with incentives to expose orders and provide liquidity to those orders. To ensure the protection of investors, orders will not be executed at prices inferior to the NBBO.

Nasdaq further states that the System also is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. Trades executed using the System will be processed through ACT in the same manner as trades executed using other Nasdaq systems. As such, information on these trades will be incorporated in Nasdaq's audit trail, ACT's risk management function, and forwarded to DTCC for clearance and settlement, if necessary. Trades executed using the System also will be disseminated on the public tape.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Prior to filing the Form PILOT, Nasdaq published a Notice to Members describing the operation of the System.²⁰ One letter was received in response thereto.²¹

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(iii),²² subparagraph (f)(5) of Rule 19b-4,²³ and subparagraph (f)(2) of Rule 19b-5.²⁴ The proposal would permit Nasdaq to continue operating Primex until the Commission grants permanent approval, but not for a period longer than six months. The proposal does not modify any rule or the operation of Primex. As such, it does not affect the protection of investors or the public interest; does not impose any burden on competition; and does not have the effect of limiting access to or availability of the system.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act,²⁵ the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.²⁶

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

²⁰ NASD Notice to Members 00-65 (September 2000).

²¹ See letter from Antonio Cecin, Managing Director, Director of Equity Trading, US Bancorp Piper Jaffray, to Eugene Lopez, Senior Vice President, Nasdaq, dated January 2, 2001.

²² 15 U.S.C. 78s(b)(3)(A)(iii).

²³ 17 CFR 240.19b-4(f)(5).

²⁴ 17 CFR 240.19b-5(f)(2).

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ For purposes of calculating the 60-day abrogation date, the Commission considers the 60-day period to have commenced on May 28, 2002, the date Nasdaq filed Amendment No. 1.

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Association. All submissions should refer to File No. SR-NASD-2002-58 and should be submitted by July 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁷

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 02-14433 Filed 6-7-02; 8:45 am]

BILLING CODE 8010-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3418]

State of Illinois (Amendment #1)

In accordance with a notice received from the Federal Emergency Management Agency, dated May 30, 2002, the above numbered declaration is hereby amended to include the following counties as disaster areas for damages caused by severe storms, tornadoes and flooding occurring on April 21, 2002 and continuing: Adams, Bond, Brown, Calhoun, Cass, Champaign, Christian, Clark, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Ford, Fulton, Greene, Hancock, Iroquois, Jersey, Lawrence, Logan, Macon, Macoupin, Mason, McDonough, Menard, Montgomery, Morgan, Moultrie, Piatt, Pike, Sangamon, Schuyler, Scott, Shelby, Vermilion, and Wabash.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Henderson, Kankakee, Knox, Livingston, McLean, Peoria, Tazewell, and Warren in the State of Illinois; Benton, Knox, Newton, Sullivan, Vermillion, Vigo, and Warren Counties in the State of Indiana; Lee County in the State of Iowa; and Clark, Lewis, Lincoln, Marion, Pike, and Ralls Counties in the State of Missouri.

The economic injury number assigned to Iowa is 9P8600.

All other information remains the same, i.e., the deadline for filing applications for physical damage is July

20, 2002 and for economic injury the deadline is February 21, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 3, 2002.

Herbert L. Mitchell,
Associate Administrator for Disaster Assistance.

[FR Doc. 02-14449 Filed 6-7-02; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3414]

State of New York (Amendment #1)

In accordance with a notice received from the Federal Emergency Management Agency, dated May 30, 2002, the above numbered declaration is hereby amended to include Franklin, Hamilton, Warren, and Washington Counties in the State of New York as disaster areas due to damages caused by an earthquake occurring on April 20, 2002.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Fulton, Herkimer, Rensselaer, Saratoga, and St. Lawrence Counties in the State of New York, and Bennington and Rutland Counties in the State of Vermont.

All other counties contiguous to the above named primary counties have previously been declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is July 15, 2002, and for economic injury the deadline is February 17, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 3, 2002.

Herbert L. Mitchell,
Associate Administrator for Disaster Assistance.

[FR Doc. 02-14448 Filed 6-7-02; 8:45 am]

BILLING CODE 8025-01-P

SOCIAL SECURITY ADMINISTRATION

[Rescission of Acquiescence Rulings 88-3(7), 92-6(10), 98-1(8), and 00-5(6)]

Rescission of Social Security Acquiescence Rulings 88-3(7), 92-6(10), 98-1(8), and 00-5(6)

AGENCY: Social Security Administration.

ACTION: Notice of Rescission of Social Security Acquiescence Rulings (ARs) 88-3(7)—*McDonald v. Bowen*, 800 F.2d

153 (7th Cir. 1986), *amended on reh'g*, 818 F.2d 559 (7th Cir. 1987); 92-6(10)—*Walker v. Secretary of Health and Human Services*, 943 F.2d 1257 (10th Cir. 1991); 98-1(8)—*Newton v. Chater*, 92 F.3d 688 (8th Cir. 1996) and 00-5(6)—*Salamalekis v. Apfel*, 221 F.3d 828 (6th Cir. 2000).

SUMMARY: In accordance with 20 CFR 402.35(b)(2), 404.985(e), and 416.1485(e), the Commissioner of Social Security gives notice of the rescission of Social Security ARs 88-3(7), 92-6(10), 98-1(8), and 00-5(6).

EFFECTIVE DATE: June 10, 2002.

FOR FURTHER INFORMATION CONTACT:

Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-1695.

SUPPLEMENTARY INFORMATION: An AR explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

As provided by 20 CFR 404.985(e)(1) and 416.1485(e)(1), we may rescind an AR as obsolete and apply our interpretation of the Act or regulations if the Supreme Court overrules or limits a circuit court holding that was the basis of an AR.

On March 1, 1988, we issued AR 88-3(7) (*see* 55 FR 28302) to reflect the holding in *McDonald v. Bowen*, 800 F.2d 153 (7th Cir. 1986), *amended on reh'g*, 818 F.2d 559 (7th Cir. 1987). On September 17, 1992, we published AR 92-6(10) (57 FR 43007) to reflect the holding in *Walker v. Secretary of Health and Human Services*, 943 F.2d 1257 (10th Cir. 1991). On February 23, 1998, we published AR 98-1(8) (63 FR 9037) to reflect the holding in *Newton v. Chater*, 92 F.3d 688 (8th Cir. 1996). On November 15, 2000, we published AR 00-5(6) (65 FR 69116) to reflect the holding in *Salamalekis v. Apfel*, 221 F.3d 828 (6th Cir. 2000). These circuit courts interpreted sections 222 and 223 of the Act to require the Social Security Administration (SSA) to allow a finding of disability and entitlement to a trial work period when a claimant returned to substantial gainful activity within 12 months of the alleged onset date of his or her disability and prior to an award of benefits. Accordingly, these four circuit courts held that Social Security

²⁷ 17 CFR 200.30-3(a)(12).

Ruling 82-52,¹ which explains how SSA applies the 12-month statutory duration requirement when a claimant returns to work within 12 months of the alleged disability onset date,² was inconsistent with the meaning of those sections of the Act.

On December 18, 2000, the United States Court of Appeals for the Fourth Circuit issued a decision in *Walton v. Apfel*, 235 F.3d 184 (4th Cir. 2000), joining these four other circuits by holding, among other things, that the claimant who returned to work within 12 months of the alleged date of disability onset and prior to adjudication of his claim was entitled to disability benefits and a 9-month trial work period under the clear language of the governing statute.

On March 27, 2002, the United States Supreme Court reversed the Fourth Circuit's decision, and held that SSA's trial work period regulation and its interpretation of the 12-month duration requirement was lawful under the Act. *Barnhart v. Walton*, ___ U.S. ___, 122 S. Ct. 1265 (2002). The Court stated that "the Agency's regulation seems a reasonable, hence permissible, interpretation of the statute. * * * The statute's complexity, the vast number of claims it engenders, and the consequent need for agency expertise and administrative experience lead us to read the statute as delegating to the Agency considerable authority to fill in, through interpretation, matters of detail related to its administration. The interpretation at issue here is such a matter. The statute's language is ambiguous. And the Agency's interpretation is reasonable. We conclude that the Agency's regulation is lawful." *Id.* at 1273-1274 (citation omitted).

Because, in *Walton*, the Supreme Court also overruled the circuit court holdings in *McDonald*, *Walker*, *Newton*, and *Salamalekis* by upholding SSA's regulations clarifying and explaining the policy interpretation that was the subject of the holdings in those cases, we are rescinding ARs 88-3(7), 92-6(10), 98-1(8) and 00-5(6).

(Catalog of Federal Domestic Assistance, Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance;

¹ Social Security Ruling (SSR) 91-7c superseded SSR 82-52, but only to the extent that SSR 82-52 discussed former procedures used to determine disability in children. The issue in these ARs did not relate to those former procedures and the cited policy statement in SSR 82-52 remained in effect.

² Final rules clarifying and providing a more detailed explanation and justification for the longstanding policy in SSR 82-52 became effective on August 10, 2000 (65 FR 42772).

96.004 Social Security—Survivors Insurance; 96.006—Supplemental Security Income.)

Dated: June 4, 2002.

Jo Anne B. Barnhart,
Commissioner of Social Security.

[FR Doc. 02-14463 Filed 6-7-02; 8:45 am]

BILLING CODE 4191-02-S

DEPARTMENT OF STATE

[Public Notice 4047]

Culturally Significant Object Imported for Exhibition Determinations: "Benenson Gallery for African Art in the Department of the Arts of Africa, Oceania, and the Americas"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Benenson Gallery for African Art in the Department of the Arts of Africa, Oceania, and the Americas," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, NY from on or about November 2002 to on or about September 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/619-6981). The address is Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: June 3, 2002.

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

[FR Doc. 02-14532 Filed 6-7-02; 8:45 am]

BILLING CODE 4710-08-P

DEPARTMENT OF STATE

[Public Notice 4046]

Culturally Significant Object Imported for Exhibition Determinations: "Genesis: Ideas of Origin in African Sculpture"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Genesis: Ideas of Origin in African Sculpture," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, NY from on or about November 18, 2002 to on or about April 13, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/619-6981). The address is Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: June 3, 2002.

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

[FR Doc. 02-14531 Filed 6-7-02; 8:45 am]

BILLING CODE 4710-08-P

DEPARTMENT OF STATE

[Public Notice 4045]

Culturally Significant Object Imported for Exhibition Determinations: "Glimpses of the Silk Road: Central Asia in the First Millennium A.D."

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to

the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Glimpses of the Silk Road: Central Asia in the First Millennium A.D.," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, NY from on or about June 15, 2002 to on or about July 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/619-6981). The address is Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: June 3, 2002.

Patricia S. Harrison,

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

[FR Doc. 02-14530 Filed 6-7-02; 8:45 am]

BILLING CODE 4710-08-P

DEPARTMENT OF STATE

[Public Notice 4048]

Culturally Significant Objects Imported for Exhibition; Determinations: "Raphael and His Age: Drawings From the Palais des Beaux-Arts, Lille"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that certain of the objects to be included in the exhibition: "Raphael and His Age:

Drawings from the Palais des Beaux-Arts, Lille," imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with a foreign owner. I also determine that the exhibition or display of these exhibit objects at The Cleveland Museum of Art, Cleveland, OH, from on or about August 25, 2002, to on or about November 3, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619-6529). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: June 5, 2002.

Patricia S. Harrison,

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

[FR Doc. 02-14533 Filed 6-7-02; 8:45 am]

BILLING CODE 4710-08-P

DEPARTMENT OF STATE

[Public Notice 3986]

Shipping Coordinating Committee; Notice of Meetings

The U.S. Shipping Coordinating Committee (SHC) will conduct a series of open meetings between June and October, 2002, to assist in refining the United States position prior to the Diplomatic Conference hosted by the International Maritime Organization (IMO) on the draft Protocol to the Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea, 1974 (draft Athens Protocol), and also to prepare for the eighty-fifth session of the Legal Committee (LEG 85). The Athens Diplomatic Conference will convene from October 21 to November 1, 2002, and LEG 85 will meet from October 22 to October 24, 2002.

The U.S. delegation to the Athens Diplomatic Conference and LEG 85 will consider views on issues raised by the draft Athens Protocol and LEG 85 as indicated below but will also allow time for discussion of other topics raised at the meetings. To submit comments in advance of the scheduled meetings, please send them via e-mail to cleonardcho@comdt.uscg.mil; via fax, attention of LT Leonard-Cho at (202)

267-4496; or via mail, Commandant (G-LMI), U.S. Coast Guard, 2100 Second St. SW., Washington, DC, 20593-0001 attention LT Leonard-Cho. Any written submissions may be posted at: <https://afls16.jag.af.mil/dscgi/ds.py/View/Collection-247>.

The following meeting schedule allows time for the preparation of U.S. submissions, if deemed necessary, for consideration at the Athens Diplomatic Conference and LEG 85. Each meeting will be held at U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001 in room 2415 at 10:00 a.m. The meeting dates and topics are as follows:

June 26, 2002: The focus will be on views expressed about the draft Athens Protocol liability and insurance limits, including the strict liability limit (Art. 3); the compulsory insurance amount (Art. 4bis); and the carrier's minimum limit of liability for personal injury (Art. 7).

July 31, 2002: The U.S. delegation will consider any additional comments on the draft Athens Protocol liability and compulsory insurance limits. In addition, the U.S. delegation will consider views on any issues raised by other country delegations and any issues raised by written submissions to the Coast Guard regarding the draft Athens Protocol. To date, other country delegations have indicated that they may raise the issue of removing the willful misconduct defense (Art. 4bis), and modifying the definition of defect in the ship (Art. 3).

September 5, 2002: This meeting will focus on views expressed on any other issue that arise subsequent to July 31, 2002 regarding the draft Athens Protocol. The meeting will also consider views on the LEG 85 agenda items of the draft Convention on Wreck Removal (*e.g.* comments on the insertion of a new cargo liability article), and Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 (SUA Convention) and its 1988 Protocol.

October 16, 2002: This meeting will consider views on all the LEG 85 agenda items as well as the draft Athens Protocol. The provisional LEG 85 agenda includes a progress report by the SUA Convention Correspondence Group; a status update on the draft Convention on Wreck Removal; and the review of an IMO resolution on safety measures for rescue at sea. Members of the public are invited to attend the SHC meeting up to the room's seating capacity. To facilitate the building security process, those who plan to attend should call or send an e-mail two days before the meeting. Upon request, participating by phone may be an

option. For further information please contact CAPT Joseph F. Ahern or LT Carolyn Leonard-Cho at cleonardcho@comdt.uscg.mil or telephone, (202) 267-1527.

Dated: May 24, 2002.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee, Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 02-14529 Filed 6-7-02; 8:45 am]

BILLING CODE 4710-07-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST-95-177]

Proposed Agency Information Collection; Comment Request; Disclosure of Change-of-Gauge Services

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice announces and requests comments on the Department of Transportation's (DOT) intention to request the extension of a previously approved collection.

DATES: Comments on this notice must be received August 9, 2002.

ADDRESSES: Comments on this notice should be directed to the Competition and Policy Analysis Division (X-55), Office of Aviation Analysis, U.S. Department of Transportation, Room PL-401, Docket No. OST-95-177 (formerly 47546), 400 Seventh Street, SW., Washington, DC 20590. Three copies are requested, but not required.

FOR FURTHER INFORMATION CONTACT: Jack Schmidt, Competition and Policy Analysis Division (X-55), Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 400 Seventh St. SW., Washington, DC 20590, (202) 366-5903.

SUPPLEMENTARY INFORMATION:

Title: Disclosure of Change-of-Gauge Services.

OMB Control Number: 2105-0538.

Type of Request: Extension of a previously approved collection.

Abstract: Change-of-gauge service is scheduled passenger air transportation for which the operating carrier uses one single flight number even though passengers do not travel in the same aircraft from origin to destination but must change planes at an intermediate

stop. In addition to one-flight-to-one-flight change-of-gauge services, change-of-gauge services can also involve aircraft changes between multiple flights on one side of the change point and one single flight on the other side. As with one-for-one change-of-gauge services, the carrier assigns a single flight number for the passenger's entire itinerary even though the passenger changes planes, but in addition, the single flight to or from the exchange point itself has multiple numbers, one for each segment with which it connects and one for the local market in which it operates.

The Department recognizes various public benefits that can flow from change-of-gauge services, such as a lowered likelihood of missed connections. However, although change-of-gauge flights can offer valuable consumer benefits, they can be confusing and misleading unless consumers are given reasonable and timely notice that they will be required to change planes during their journey.

Section 41712 of Title 49 of the U.S. Code authorizes the Department to decide if a U.S. air carrier or foreign air carrier or ticket agent (including travel agents) has engaged in unfair or deceptive practices and to prohibit such practices. Under this authority, the Department has adopted various regulations and policies to prevent unfair or deceptive practices or unfair methods of competition. Among these are the CRS regulations contained in 14 CFR part 255.

The Department's current CRS rules, adopted in September of 1992, require that CRS displays give notice of any flight that involves a change of aircraft *en route*. In addition, the Department requires as a matter of policy that consumers be given notice of aircraft changes for change-of-gauge flights. (See Department Order 89-1-31, page 5.) The Department proposed to adopt the extant regulations, however, because it was not convinced that these rules and policies resulted in effective disclosure all of the time.

Affected Public: All U.S. air carriers, foreign air carriers, computer reservations systems, travel agents doing business in the United States and the traveling public.

Respondents: U.S. air carriers, foreign air carriers, ticket agents (including travel agents), and the traveling public.

Estimated Number of Respondents: 33,898 excluding travelers.

Total Annual Responses: 24.7 million to 74.1 million.

Estimated Total Annual Burden on Respondents: 205,908 to 617,736 hours.

Most of this data collection (third party notification) is accomplished through highly automated computerized systems.

Comments are invited on: (a) Whether this 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 burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on the respondents, including through the use of automated techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC, on June 4, 2002.

Randall D. Bennett,

Director, Office of Aviation Analysis.

[FR Doc. 02-14359 Filed 6-7-02; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket Nos. OST-95-179 and OST-95-623]

Proposed Agency Information Collection; Comment Request; Disclosure of Code-Sharing Arrangements and Long-Term Wet Leases

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces and requests comments on the Department of Transportation's intention to request the extension of a previously approved collection that reflects DOT's current consumer notification rules and policies to ensure that consumers have pertinent information about airline code-sharing arrangements and long-term wet leases in domestic and international air transportation. The information collection requirement in the rule, among other things, (1) requires travel agents doing business in the United States, foreign air carriers, and U.S. air carriers (a) to give consumers reasonable and timely notice if air transportation they are considering purchasing will be provided by an airline different from the

airline holding out the transportation, and (b) to disclose the identity of the airline that will actually operate the aircraft; and (2) for tickets issued in the United States, requires U.S. and foreign air carriers and travel agents to provide written notice of the transporting carrier's identity at the time of purchase of air transportation involving a code-sharing or long-term wet-lease arrangement.

DATES: Comments on this notice must be received on or before August 9, 2002.

ADDRESSES: Comments on this notice should be directed to the Competition and Policy Analysis Division (X-55), Office of Aviation Analysis, U.S. Department of Transportation, Room PL-401, Docket Nos. OST-95-179 and OST-95-623, 400 Seventh Street, SW., Washington, DC 20590. Three copies are requested but not required.

FOR FURTHER INFORMATION CONTACT: Jack Schmidt, Office of the Assistant Secretary for Aviation and International Affairs, Office of the Secretary, U.S. Department of Transportation, 400 Seventh St. SW., Washington, DC 20590, (202) 366-5903.

SUPPLEMENTARY INFORMATION:

Title: Disclosure of Code-sharing Arrangements and Long-term Wet Leases.

OMB Control Number: 2105-0537.

Type of request: Extension of a previously approved collection.

Abstract: Code-sharing is the name given to a common airline industry marketing practice where, by mutual agreement between cooperating carriers, at least one of the airline designator codes used on a flight is different from that of the airline operating the aircraft. In one version, two or more airlines each use their own designator codes on the same aircraft operation. Although only one airline operates the flight, each airline in a code-sharing arrangement may hold out, market and sell the flight as its own in published schedules. Code-sharing also refers to other arrangements where a code on a passenger's ticket is not that of the operator of the flight, but where the operator does not also hold out the service in its own name. Such code-sharing arrangements are common between commuter air carriers and their larger affiliates and the number of arrangements between U.S. air carriers and foreign air carriers has also been increasing. Arrangements falling into this category are similar to leases of aircraft and crew (wet leases).

The Department recognizes the strong preference of air travelers for on-line service (service by a single carrier) on connecting flights over interline service

(service by multiple carriers). Code-sharing arrangements are, in part, a marketing response to this demand for on-line service since these arrangements enable airlines to hold out multi-carrier service as on-line service. Often, code-sharing partners offer services similar to those available for on-line connections with the goal of offering "seamless" service (*i.e.*, service where the transfers from flight to flight or airline to airline are facilitated). For example, they may locate gates near each other to make connections more convenient or coordinate baggage handling to give greater assurance that baggage will be properly handled.

Code-sharing arrangements can help airlines operate more efficiently because they can reduce costs by providing a joint service with one aircraft rather than operating separate services with two aircraft. Particularly in thin markets, this efficiency can lead to increased price and service options for consumers or enable the use of equipment sized appropriately for the market. Therefore, the Department recognizes that code-sharing, as well as long-term wet leases, can offer significant economic benefits.

Although code-sharing and wet-lease arrangements can offer significant consumer benefits, they can also be misleading unless consumers know that the transportation they are considering for purchase will not be provided by the airline whose designator code is shown on the ticket and unless they know the identity of the airline on which they will be flying. The growth in the use of code-sharing, wet-leasing and similar marketing tools, particularly in international air transportation, had given the Department concern about whether the then-current disclosure rules (14 CFR 399.88) protected the public interest adequately.

Affected Public: All U.S. air carriers, foreign air carriers, computer reservations systems (CRSs), travel agents doing business in the United States, and the traveling public.

Respondents: U.S. air carriers, foreign air carriers, ticket agents (including travel agents), and the traveling public.

Estimated Number of Respondents: 33,898 excluding travelers.

Estimated Number of Responses per Respondent: An average of 3,009 phone calls of 15 seconds duration (unweighted average) based on 102 million phone calls and 33,898 respondents.

Estimated Total Annual Burden on Respondents: Annual reporting burden for this data collection is estimated at 424,994 hours for all travel agents and airline ticket agents and 424,994 hours

for air travelers based on 15 seconds per phone call and an average of 2.1 phone calls per trip.

Most of this data collection (third party notification) is accomplished through highly automated computerized systems.

Comments are invited on: (a) Whether this collection of information (third party notification) 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 burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on the respondents, including through the use of automated techniques or other forms of information technology.

Issued in Washington, DC, on June 4, 2002.

Randall D. Bennett,

Director, Office of Aviation Analysis.

[FR Doc. 02-14360 Filed 6-7-02; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Establishment of a Commission

AGENCY: Office of the Secretary, DOT.

SUMMARY: This notice informs the public of the establishment of the National Commission To Ensure Consumer Information and Choice in the Airline Industry, in accordance with Section 228 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21), Pub. L. 106-181.

FOR FURTHER INFORMATION CONTACT: Richard J. Fahy, Jr., Executive Director, at 1110 Vermont Avenue, NW., Suite 1160, Washington, DC 20005.

SUPPLEMENTARY INFORMATION:

Background

AIR-21 authorized the Commission to study: (a) Whether the financial condition of travel agents is declining and, if so, the effect of such a decline on consumers and, (b) whether there are impediments to information regarding the services and products offered by the airline industry, and, if so, the effects of those impediments on travel agents, Internet-based distributors, and consumers. A special focus of the study is the condition of smaller travel agencies (less than \$1 million in annual revenues). Based on the results of its study, the Commission is to make

recommendations to improve the condition of travel agents, especially smaller travel agents, and to enhance consumer access to travel information. The Commission's report is due November 16, 2002.

On May 16, 2002, U.S. Secretary of Transportation Norman Y. Mineta announced the establishment of this Commission and the selection of David L. Winstead, a Washington attorney and a former Maryland Secretary of Transportation, as the chair. Mr. Winstead is a former chairman of the Maryland Aviation Commission, and was President of the American Association of State Highway and Transportation Officials (AASHTO) in 1998. The Secretary also named Patrick V. Murphy, Jr., and Maryles Casto to serve on the commission. Mr. Murphy is a former Deputy Assistant Secretary for Aviation and International Affairs at the U.S. Department of Transportation, and is currently a principal at Gerchick-Murphy Associates, a Washington consulting firm. He currently represents United Airlines, JetBlue, and United Parcel Service. Ms. Casto is President and CEO of Casto Travel, Inc. of Santa Clara, California, the largest travel agency in the Silicon Valley.

Members of Congress previously appointed the following commissioners:

- Mr. Ted R. Lawson, President and CEO of National Travel, Inc. in Charleston, West Virginia, appointed by Senate Majority Leader Tom Daschle.
- Dr. Ann B. Mitchell, President and Owner of Carlson Wagonlit/Travel First, Inc. in Starkville, Mississippi, appointed by Senate Minority Leader Trent Lott.
- Ms. Joyce Rogge, Senior Vice President-Marketing at Southwest Airlines in Dallas, appointed by Senator Lott.
- Mr. Paul M. Ruden, Senior Vice President for Legal and Industry Affairs for the American Society of Travel Agents in Washington, appointed by House Speaker Dennis Hastert.
- Mr. Gerald J. Roper, President and CEO of the Chicagoland Chamber of Commerce, appointed by Speaker Hastert.
- Mr. Thomas P. Dunne, Sr., Chairman, CEO and President of the construction company Fred Weber, Inc., and a professional engineer in Maryland Heights, Missouri, appointed by House Minority Leader Richard Gephardt.

The Commission will hold its first public hearing on Wednesday, June 12, starting promptly at 10:00 AM in the Hemisphere—A Conference Room, Ronald Building at 1300 Pennsylvania Avenue, NW., Washington, DC. Other hearings are planned for June 26 in

Chicago, and July 11 in San Francisco. Public comments may be submitted to the Commission at the Commission's offices.

The Commission's offices are located at 1110 Vermont Avenue NW., Suite 1160, Washington, DC 20005. The Executive Director of the Commission is Mr. Richard J. Fahy, Jr. Mr. Fahy is a graduate of Yale Law School and is a former Associate General Counsel with American Airlines. Recently, he served as Senior Vice President and General Counsel of Vacation.Com, Inc., the largest travel agency industry consortium with over 9000 members.

Dated: June 4, 2002.

Douglas V. Leister,

Executive Assistant.

[FR Doc. 02-14518 Filed 6-7-02; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG-2002-12420]

Great Lakes Pilotage Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Great Lakes Pilotage Advisory Committee (GLPAC) will meet to discuss various issues relating to pilotage on the Great Lakes. The meeting will be open to the public.

DATES: GLPAC will meet on Monday, July 1, 2002, from 1:30 p.m. to 5 p.m. and on Tuesday, July 2, 2002, from 9 a.m. to 4 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before June 20, 2002. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before June 20, 2002.

ADDRESSES: GLPAC will meet in the Grissom Room of the Holiday Inn—BWI Airport, 890 Elkridge Landing Road, Linthicum, MD 21090. Send written material and requests to make oral presentations to Margie Hegy, Commandant (G-MW), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001. This notice is available on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Margie Hegy, Executive Director of GLPAC, telephone 202-267-0415, fax 202-267-4700.

SUPPLEMENTARY INFORMATION: Notice of the meeting is given under the Federal

Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

- The agenda includes the following:
- (1) Overview of pilotage on the Great Lakes.
 - (2) Relocation of the Great Lakes Pilotage Staff.
 - (3) Bridge Hour Study.
 - (4) Ratemaking Methodology.
 - (5) Automatic Identification System (AIS) Training.
 - (6) Information Exchange.

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. If you would like to make an oral presentation at the meeting, please notify the Executive Director no later than June 20, 2002. Written material for distribution at the meeting should reach the Coast Guard no later than June 20, 2002. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 10 copies to the Executive Director no later than June 20, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Executive Director as soon as possible.

Dated: June 3, 2002.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 02-14516 Filed 6-7-02; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Suffolk County, New York

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a NEPA environmental impact statement will be prepared for proposed highway project PIN 0041.97, NY 25 Reconstruction, County Road 83 to Coram—Mt. Sinai Road, Suffolk County, New York.

FOR FURTHER INFORMATION CONTACT: Thomas Oelerich, P.E., Acting Regional

Director, New York State Department of Transportation, 250 Veterans Memorial Highway, Hauppauge, New York 11788, Telephone: (631) 952-6632. or Robert Arnold, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brein Federal Building, 7th Floor, Room 719, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518) 431-4127.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT), will prepare an environmental impact statement (EIS) on a proposal to improve NY Route 25 in Suffolk County, New York. The proposed improvement would involve the reconstruction of the existing route in the hamlet of Coram, Town of Brookhaven for a distance of 1.5 miles. The objectives of the project are: (1) To improve the safety of the roadway; (2) To improve the overall traffic conditions using cost effective methods to provide an acceptable level of service for the design period of 20 years while minimizing adverse environmental impacts; (3) To address geometric deficiencies to improve sight distance and traffic flow; (4) To reconstruct pavement to provide an acceptable riding surface within the project area for the design period; (5) To provide adequate pavement drainage to eliminate roadway flooding.

Alternatives under consideration include: (1) No Build; (2) Utilization of a five lane typical section (two lanes in each direction with either a continuous center turn lane or a raised center median with provisions for turns) and; (3) Split one way roadways, build new NY 25 eastbound on existing State property south of the existing NY 25 and retain the existing NY 25 as the reconstructed NY 25 westbound.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. In addition a Public Hearing will be held. Public notice will be given of the time and place of the meeting and hearings. The draft EIS will be available for public review and agency review and comment. A Public Information Center/ Scoping Meeting will be held in the Activity Court of the Longwood Middle School located on Middle Island—Yaphank Road in Middle Island, N.Y., 11953 on Wednesday, June 12, 2002 from 4:00 pm to 8:00 pm.

To ensure that the full range of issues related to this proposed action are

addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the NYSDOT or FHWA at the address provided above.

Authority: 23 U.S.C. 315; 23 CFR 771.123.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: May 16, 2002.

Douglas P. Conlan,

District Operations Engineer, Federal Highway Administration, New York Division, Albany, New York.

[FR Doc. 02-14403 Filed 6-7-02; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-837X]

Long Island Rail Road Company— Discontinuance of Service Exemption—in Garden City, Long Island, NY

On May 21, 2002, the Long Island Rail Road Company (LIRR), a Class II rail common carrier, filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from 49 U.S.C. 10903 to discontinue service over a line of railroad between milepost 18.8 in Garden City and milepost 21.0 in Garden City, Nassau County, NY, a distance of 2.2 miles.¹ The line traverses U.S. Postal Service Zip Code 11530 and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interests of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by September 6, 2002.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will

¹LIRR is owned by the Metropolitan Transportation Authority (MTA). The notice states that both LIRR and MTA are State of New York public authorities and public benefit corporations.

be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a \$1,100 filing fee. See 49 CFR 1002.2(f)(25).

All filings in response to this notice must refer to STB Docket No. AB-837X and must be sent to: (1) Surface Transportation Board, Case Control Unit, 1925 K Street, NW., Washington, DC 20423-0001; and (2) Roberta Bender, 347 Madison Ave., Ninth Floor, New York, NY 10017-3739. Replies to the LIRR petition are due on or before July 1, 2002.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Service at (202) 565-1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565-1552. [TDD for the hearing impaired is available at 1-800-877-8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment or discontinuance proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at "WWW.STB.DOT.GOV."

Decided: June 5, 2002.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 02-14640 Filed 6-7-02; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF THE TREASURY

Customs Service

Relocation of Office of Regulations and Rulings

AGENCY: U.S. Customs Service,
Department of the Treasury.

ACTION: Notice of change in office
location.

SUMMARY: The Office of Regulations and Rulings of the U.S. Customs Service is

relocating on or about June 7–10, 2002, from the Ronald Reagan Building and International Trade Center to the U.S. Mint Annex Building at 799 9th Street, NW, Washington, DC. All correspondence directed to the Office of Regulations and Rulings, including ruling requests and comments regarding pending Customs regulatory proposals, should continue to be sent to the Ronald Reagan Building and International Trade Center address. However, anyone wishing to view comments on regulatory projects will need to come to the new location. The phone numbers of the Office of Regulations and Rulings will also change. This document gives notice of the new location and phone numbers.

FOR FURTHER INFORMATION CONTACT: Joseph Clark, Regulations Branch (202–572–8768).

SUPPLEMENTARY INFORMATION:

Background

The Office of Regulations and Rulings (OR&R) of the U.S. Customs Service is relocating on or about June 7–10, 2002, from the Ronald Reagan Building and International Trade Center to the U.S. Mint Annex Building at 799 9th Street, NW, Washington, DC. Anyone wishing to send correspondence to the Office of Regulations and Rulings, including ruling requests and comments regarding pending Customs regulatory proposals, should continue to address the correspondence to: U.S. Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue, NW, Washington, DC, 20229, with either the Regulations Branch or other appropriate branch name inserted into the address.

Viewing Comments

As of June 10, 2002, anyone wishing to view comments that were addressed to the Regulations Branch of Customs on a proposal published in the **Federal Register** should come to the new OR&R location specified in the preceding paragraph. It is highly recommended that, during the week of June 10, 2002, a person first call Joseph Clark at 202–572–8768 to schedule an appointment to view the comments.

Phone Numbers

The phone numbers for the Office of Regulations and Rulings as of June 8, 2002, are as follows:

Assistant Commissioner, OR&R—(202) 572–8700
Operational Oversight Division—(202) 572–8820
International Agreements Staff—(202) 572–8800

International Trade Compliance Division—(202) 572–8733
Regulations Branch—(202) 572–8760
Penalties Branch—(202) 572–8750
Entry Procedures and Carriers Branch—(202) 572–8730
Intellectual Property Rights Branch—(202) 572–8710
Value Branch—(202) 572–8740
Disclosure Law Branch—(202) 572–8720
Commercial Rulings Division—(202) 572–8830
Duty and Refund Determination Branch—(202) 572–8770
Textile Branch—(202) 572–8790
Special Classification and Marking Branch—(202) 572–8810
General Classification Branch—(202) 572–8780

Dated: June 5, 2002.

Sandra L. Bell,

Acting Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 02–14462 Filed 6–7–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–G, Certain Government and Qualified State Tuition Program Payments.

DATES: Written comments should be received on or before August 9, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (CAROL.A.SAVAGE@irs.gov), Internal Revenue Service, room 6407, 1111

Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Certain Government and Qualified State Tuition Program Payments.

OMB Number: 1545–0120.

Form Number: 1099–G.

Abstract: Form 1099–G is used to report government payments such as unemployment compensation, state and local income tax refunds, credits, or offsets, discharges of indebtedness by the Federal Government, taxable grants, subsidy payments from the Department of Agriculture, and qualified state tuition program payments.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Federal, state, local or tribal governments.

Estimated Number of Responses: 61,000,000.

Estimated Time Per Response: 11 min.

Estimated Total Annual Burden

Hours: 11,590,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 3, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02-14502 Filed 6-7-02; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4797

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4797, Sales of Business Property.

DATES: Written comments should be received on or before August 9, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622-3945, or through the internet (CAROL.A.SAVAGE@irs.gov), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Sales of Business Property.

OMB Number: 1545-0148.

Form Number: 4797.

Abstract: Form 4797 is used by taxpayers to report sales, exchanges, or involuntary conversions of assets used in a trade or business. It is also used to compute ordinary income from recapture and the recapture of prior year losses under section 1231 of the Internal Revenue Code.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, and farms.

Estimated Number of Respondents: 1,396,388.

Estimated Time Per Respondent: 50 hr., 16 min.

Estimated Total Annual Burden Hours: 70,196,425.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 3, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02-14503 Filed 6-7-02; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5305A-SEP

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed

and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5305A-SEP, Salary Reduction Simplified Employee Pension—Individual Retirement Accounts Contribution Agreement.

DATES: Written comments should be received on or before August 9, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622-3945, or through the internet (CAROL.A.SAVAGE@irs.gov), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Salary Reduction Simplified Employee Pension—Individual Retirement Accounts Contribution Agreement.

OMB Number: 1545-1012.

Form Number: 5305A-SEP.

Abstract: Form 5305A-SEP is used by an employer to make an agreement to provide benefits to all employees under a Simplified Employee Pension (SEP) described in Internal Revenue Code section 408(k). This form is not to be filed with the IRS, but is to be retained in the employer's records as proof of establishing a SEP and justifying a deduction for contributions made to the SEP.

Current Actions: There are no changes being made to Form 5305A-SEP at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100,000.

Estimated Time Per Response: 9 hours, 16 minutes.

Estimated Total Annual Burden Hours: 972,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material

in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 3, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02-14504 Filed 6-7-02; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG-209826-96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this

opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG-209826-96, Application of the Grantor Trust Rules to Nonexempt Employees' Trusts (§ 1.671-1(h)(3)(iii)).

DATES: Written comments should be received on or before August 9, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Carol Savage, (202) 622-3945, or through the internet (*CAROL.A.SAVAGE@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application of the Grantor Trust Rules to Nonexempt Employees' Trusts.

OMB Number: 1545-1498.

Regulation Project Number: REG-209826-96.

Abstract: This regulation provides rules for the application of the grantor trust rules to certain nonexempt employees' trusts. Under Section 1.671-1(h)(3)(iii) of the regulation, the overfunded amount for certain foreign employees' trusts will be reduced to the extent the taxpayer demonstrates to the Commissioner, and indicates on a statement attached to a timely filed Form 5471, that the overfunded amount is attributable to a reasonable funding exception. The IRS needs this information to determine accurately the portion of the trust that is properly treated as owned by the employer.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 3, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02-14505 Filed 6-7-02; 8:45 am]

BILLING CODE 4830-01-P

Corrections

Federal Register

Vol. 67, No. 111

Monday, June 10, 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.

FEDERAL HOUSING FINANCE BOARD

12 CFR Chapter IX

[No. 2002-05]

RIN 3069-AB12

Technical Amendments to Federal Housing Finance Board Regulations

Correction

In rule document 02-5462 beginning on page 12841 in the issue of Wednesday, March 20, 2002, make the following corrections:

§ 915.7 [Corrected]

1. On page 12845, in the third column, in § 915.7, in amendatory instruction 49i., in the fifth line, “Bank Act” should read “Act”.

§ 940.2 [Corrected]

2. On page 12850, in the first column, in § 940.2, in amendatory instruction 98ii., in the first and fourth lines, “members” should read “members’ ”.

[FR Doc. C2-5462 Filed 6-7-02; 8:45 am]

BILLING CODE 1505-01-D



Federal Register

**Monday,
June 10, 2002**

Part II

Environmental Protection Agency

40 CFR Part 63

**National Emission Standards for
Hazardous Air Pollutants: Surface Coating
of Metal Coil; Final Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL-7214-6]

RIN 2060-AG97

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for new and existing sources that coat metal coil. The EPA has identified metal coil surface coating as a major source of hazardous air pollutant (HAP) emissions such as methyl ethyl ketone, glycol ethers, xylenes (isomers and mixtures), toluene, and isophorone. Each of these major HAP can cause reversible or irreversible toxic effects following sufficient exposure. The potential toxic effects include eye, nose, throat, and skin irritation, and blood cell, heart, liver, and kidney damage.

The final rule implements section 112(d) of the Clean Air Act (CAA) and will require all new and existing metal coil coating operations that are major sources to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). The EPA estimates that the final rule will reduce nationwide HAP emissions from metal coil coating operations by

approximately 53 percent. The emissions reductions achieved by these NESHAP, when combined with the emissions reductions achieved by other similar standards, will provide protection to the public and achieve a primary goal of the CAA.

DATES: Effective June 10, 2002. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of June 10, 2002.

ADDRESSES: Docket No. A-97-47 contains supporting information used in developing the standards. The docket is located at the U.S. EPA, 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 concerning applicability and rule determinations, contact your State or local representative or the appropriate EPA Regional Office representative. For information concerning the analyses performed in developing these NESHAP, contact Ms. Rhea Jones, Coatings and Consumer Products Group (C539-03), Emission Standards Division, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541-2940, facsimile number (919) 541-5689; electronic mail address: jones.rhea@epa.gov.

SUPPLEMENTARY INFORMATION: *Docket.* The docket is an organized and complete file of all the information considered by the EPA in the development of the final 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 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 the final rule are 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 the final rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules <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. If a metal coil coating line is operated at your facility, it may be a regulated entity. Categories and entities potentially regulated by this action include:

Category	NAICS codes	Examples of potentially regulated entities
Metal Coil Coating Industry	332812 ^a , 323122, 339991, 326113, 32613, 32614, 331112, 331221, 33121, 331312, 331314, 331315, 331319, 332312, 332322, 332323, 332311, 33637, 332813, 332999, 333293, 336399, 325992, 42183.	Those facilities that perform surface coating of metal coil using HAP-containing materials.

^a The majority of facilities are included in NAICS 332812.

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 § 63.5090 of the final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the appropriate EPA Regional Office representative.

Judicial Review. The NESHAP for Metal Coil Coating were proposed on July 18, 2000 (65 FR 44616). The final rule announces the EPA's final decision on the rule. Under section 307(b)(1) of

the CAA, judicial review of these NESHAP is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by August 9, 2002. Only those objections to the rule which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements that are the subject of the final rule may not be challenged later in civil or criminal court brought by the EPA to enforce these requirements.

Outline. The information presented in this preamble is organized as follows:

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- II. What are the final standards?
 - A. What facilities are subject to the rule?
 - B. What is the affected source?
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 - I. National Technology Transfer and Advancement Act of 1995
 - J. Congressional Review Act

I. What Are the Background and Public Participation for the Rule?

Section 112 of the CAA requires EPA to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. Major sources of HAP are those that have the potential to emit greater than 9.07 megagrams per year (Mg/yr) (10 tons per year (tpy)) of any one HAP or 22.68 Mg/yr (25 tpy) of any combination of HAP.

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the

better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing 5 sources for categories or subcategories with fewer than 30 sources) (CAA section 112(d)(3)).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards that are more stringent than the floor based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements (CAA section 112(d)(2)).

On July 16, 1992 (57 FR 31576), we published a list of source categories slated for regulation under section 112(c). The source category list included the metal coil coating (surface coating) source category regulated by the standards being promulgated today. We proposed standards for the metal coil coating sources covered by the rule on July 18, 2000 (65 FR 44616).

The preamble for the proposed standards described the rationale for the proposed standards. Public comments were solicited at the time of the proposal. The public comment period lasted from July 18, 2000 to September 18, 2000. Industry representatives, regulatory agencies, environmental groups, and the general public were given the opportunity to comment on the proposed rule and to provide additional information during and after the public comment period. Although we offered at proposal the opportunity for oral presentation of data, views, or arguments concerning the proposed rule, no one requested a public hearing, and a public hearing was not held.

We received a total of 17 letters containing comments on the proposed rule. Commenters included individual companies with coil coating operations, industry trade associations, State regulatory agencies, and an association of air pollution control vendors. Today's final rule reflects our full consideration of all of the comments received. Major public comments on the proposed rule, along with our responses to those comments, are summarized in this preamble. See the Summary of Public

Comments and Responses document for a more detailed discussion of public comments and our responses (docket number A-97-47).

II. What Are the Final Standards?

A. What Facilities Are Subject to This Rule?

Metal coil surface coating is a process-specific rather than a product-specific operation. Accordingly, the final rule applies to you if you own or operate any coil coating line at a facility that is a major source of HAP emissions. We have defined a coil coating line as a process and the collection of equipment used to apply an organic coating to the surface of metal coil that is at least 0.15 millimeter (0.006 inch) thick. A coil coating line includes a web unwind or feed section, a series of one or more work stations, any associated curing oven, wet section, and quench station. A coil coating line does not include ancillary operations such as mixing/thinning, cleaning, wastewater treatment, and storage of coating material.

You are not subject to the final rule if your coil coating line is located at an area source. An area source of HAP is any facility that has the potential to emit HAP but is not a major source. You may establish area source status by limiting the source's potential to emit HAP through appropriate mechanisms available through your permitting authority.

The requirements of the final rule do not apply to a coil coating line that is part of research or laboratory equipment, coats metal coil for use in flexible packaging, or is a coil coating line on which 85 percent or more of the metal coil coated, based on surface area, is less than 0.15 millimeter (0.006 inch) thick. If you operate a coil coating line on which 85 percent or more of the metal coil coated, based on surface area, is less than 0.15 millimeter (0.006 inch) thick, it would be subject to the Paper and Other Web Coating NESHAP (40 CFR part 63, subpart JJJJ) currently under development. However, you may choose to demonstrate compliance with the requirements of today's rule instead of those of subpart JJJJ if either of the following two criteria applies: (1) The coating line is used to coat metal coil of thicknesses both less than and greater than or equal to 0.15 millimeter (0.006 inch) thick, regardless of the percentage of surface area of each thickness coated, or (2) the coating line is used to coat only metal coil that is less than 0.15 millimeter (0.006 inch) thick and the coating line is controlled by a common control device that also receives organic

HAP emissions from a coil coating line that is subject to the requirements of this subpart. Compliance with the requirements of today's rule in accordance with either of the above criteria constitutes compliance with the Paper and Other Web Coating NESHAP (40 CFR part 63, subpart JJJJ), therefore, you would not be subject to the compliance demonstration requirements of subpart JJJJ.

This rule does not apply to facilities that print a company logo for identification purposes or other markings for inventory control purposes onto bare, uncoated metal coils using flexographic printing equipment, where no other coating is applied.

A major source is also subject to all other applicable NESHAP for the various source categories, other than metal coil coating and paper and other web coating, that may be present at the facility. This means your facility may be subject to multiple NESHAP, and you are responsible for complying with the standards set for each NESHAP.

B. What Is the Affected Source?

We define an affected source as a stationary source, group of stationary sources, or part of a stationary source to which a specific emission standard applies. Within a source category, we select the specific emission sources (emission points or groupings of emission points) that will make up the affected source for that category.

For the final metal coil NESHAP, the affected source subject to the emission standards is the collection of all of the metal coil coating lines at your facility. The portions of the metal coil coating line to which the emission limitations apply are the coating application stations and associated curing ovens. Wet section/pre-treatment and quench operations are part of the metal coil coating line, but are not subject to the emission limitations. The coil coating line does not include ancillary operations such as storage of coating and cleaning material, wastewater treatment, coating material mixing/thinning, and parts and equipment cleaning and, therefore, the standards do not apply to these operations.

C. What Are the Emission Limits and Operating Limits?

Emission Limits. Today's final rule provides you the option of limiting organic HAP emissions to one of the following three specified levels: (1) No more than 2 percent of the organic HAP applied (98 percent overall control efficiency (OCE) limit); (2) no more than 0.046 kilogram of organic HAP per liter (kg/l) (0.38 pound per gallon (lb/gal)) of

solids applied during each 12-month compliance period (emission rate limit); or (3) if you are using an oxidizer to control organic HAP emissions, operate the oxidizer such that an outlet organic HAP concentration of no greater than 20 parts per million by volume (ppmv) on a dry basis is achieved and the efficiency of the capture system is 100 percent (outlet concentration limit).

You may choose from several compliance options in the final rule to achieve the emission limits. You may comply through a pollution prevention approach by applying only coating materials that meet the emission rate limit, either individually or collectively. Second, you may use a capture system and add-on control device to either reduce emissions by 98 percent or by the degree needed to meet the emission rate limit. Third, you may use a 100 percent efficient capture system and an oxidizer that reduces organic HAP emissions to no more than 20 ppmv.

Operating Limits. If you reduce emissions by using a capture system and add-on control device (other than a solvent recovery system for which you conduct a liquid-liquid material balance), the final operating limits would apply to you. These limits are site-specific parameter limits that you determine during the initial performance test of the system. For capture systems, you must develop a capture system monitoring plan. The monitoring plan must identify the operating parameter to be monitored, explain why this parameter is appropriate for demonstrating ongoing compliance, and identify the specific monitoring procedures. In the plan you must specify operating limits for the capture system operating parameter that demonstrate compliance with the emission limits. The monitoring plan must be available for inspection by your permitting authority upon request.

For thermal oxidizers, you must monitor the combustion temperature. For catalytic oxidizers, you must either monitor the temperature immediately before and after the catalyst bed, or you must monitor the temperature before the catalyst bed and prepare and implement an inspection and maintenance plan that includes periodic catalyst activity checks.

The site-specific operating limits that you establish must reflect operation of the capture system and control device during a performance test that demonstrates achievement of the emission limits during representative operating conditions.

If you use a capture system and control device for compliance, you are required to develop and operate

according to a startup, shutdown, and malfunction plan (SSMP) during periods of startup, shutdown, or malfunction of the capture system and control device.

The NESHAP General Provisions of 40 CFR part 63, subpart A codify certain procedures and criteria for all 40 CFR part 63 NESHAP and also apply to you, as indicated in Table 2 to subpart SSSS. The General Provisions contain administrative procedures, preconstruction review procedures for new sources, and procedures for conducting compliance-related activities such as notifications, reporting and recordkeeping, performance testing, and monitoring. Subpart SSSS refers to individual sections of the General Provisions to highlight key sections that are relevant. However, unless specifically overridden in Table 2 to subpart SSSS of Part 63, all of the applicable General Provisions requirements apply to you.

In addition to the metal coil surface coating NESHAP, you may also be subject to other future or existing rules, such as State rules requiring reasonably available control technology limits on volatile organic compounds (VOC) emissions or the new source performance standards (NSPS) in 40 CFR part 60, subpart TT. You must comply with all rules that apply to you. Compliance with different standards should be resolved through your title V permit.

D. What Pollutants Are Limited by the Rule?

Today's final rule limits total organic HAP emissions from coil coating lines. These organic HAP are included on the list of HAP in section 112(b) of the CAA.

E. When Do I Show Initial Compliance With the Standards?

Existing sources will have to comply with today's final rule no later than 3 years after June 10, 2002. New or reconstructed sources must comply immediately upon startup of the affected source or by June 10, 2002, whichever is later.

The initial compliance period begins on the applicable compliance date described above for an existing source or a new or reconstructed source and ends on the last day of the 12th month following the compliance date. If the compliance date falls on any day other than the first day of the month, then the initial compliance period extends through that month plus the next 12 months. For the purpose of demonstrating continuous compliance, a compliance period consists of 12 months. Each month after the end of the

initial compliance period is the end of a compliance period consisting of that month and the preceding 11 months. We have defined "month" as a calendar month or a pre-specified period of 28 to 35 days to allow for flexibility at sources where data are based on a business accounting period.

F. How Do I Demonstrate Compliance?

You must account for all coating materials used in the affected source when determining compliance with the applicable emission limit. To make this determination, you must use at least one of the following compliance options: use of "as purchased" individually compliant coating materials (compliance option 1); use of "as applied" compliant coating materials (compliance option 2); use of a capture system and control device to achieve 98 percent OCE or 20 ppmv outlet (compliance option 3); and use of a capture system and control devices to maintain an acceptable emission rate (compliance option 4). You may apply any of the compliance options to an individual coil coating line, or to multiple lines as a group, or to the entire affected source. You may use different compliance options for different coil coating lines, or at different times on the same line. However, you may not use different compliance options at the same time on the same coil coating line. If you switch between compliance options for any coil coating line or group of lines, you must document this switch, and you must report it in your next semiannual compliance report.

If you use compliance option 1, then you must demonstrate that the organic HAP in each coating material used during each compliance period does not exceed 0.046 kg/l (0.38 lb/gal) of solids, as purchased.

There are two procedures for demonstrating compliance through the use of compliance option 2. You may either demonstrate that the organic HAP in each coating material used does not exceed 0.046 kg/l (0.38 lb/gal) of solids, as applied for each compliance period or demonstrate that the average of all coating materials used does not exceed this limit for each compliance period.

If you use compliance option 3, then you must demonstrate that either the overall organic HAP control efficiency is at least 98 percent on a monthly basis for individual or groups of coil coating lines; or overall organic HAP control efficiency is at least 98 percent during the initial performance test for individual coil coating lines; or oxidizer organic HAP outlet concentration is no greater than 20 ppmv and there is 100

percent capture efficiency during the initial performance test. When using emission capture and add-on controls to demonstrate compliance, you must also demonstrate that applicable operating limits are achieved continuously.

If you use compliance option 4, then you must demonstrate that the average organic HAP emission rate does not exceed 0.046 kg/l (0.38 lb/gal) of solids applied during each compliance period.

In addition to the testing and monitoring requirements specified below for the affected source to demonstrate compliance, the final rule adopts the testing requirements specified in § 63.7.

1. Test Methods and Procedures

If you demonstrate compliance with compliance option 1 or 2 based on the application of compliant coating materials on your coil coating lines or with compliance option 4 based on the combination of coating materials applied and control devices, you must determine the organic HAP content or the volatile matter content, and the solids content of coating materials "as purchased" or "as applied." To determine organic HAP content, you may either use EPA Method 311 of appendix A of 40 CFR part 63, use an alternative method for determining the organic HAP content (but only after obtaining EPA approval), or use the nonaqueous volatile matter content of the coating materials applied as a surrogate for the organic HAP content. The nonaqueous volatile matter content, which would include all organic HAP plus all other organic compounds (excluding water), must be determined by EPA Method 24 of appendix A of 40 CFR part 60, or an EPA approved alternative method. You may rely on manufacturer's data to determine the organic HAP content or volatile matter content. However, if there is any inconsistency between the results of the test methods specified above (or an approved alternative) and manufacturer's or supplier's data, the test method results will prevail for compliance and enforcement purposes. You may use the test methods specified in the rule for determining volume solids content of the coating materials (ASTM D2697-86 (Reapproved 1998) or ASTM D6093-97), or you may rely on manufacturer's or supplier's data.

You must determine the mass of each coating material "as purchased" or "as applied" using company records. If diluent solvents or other ingredients are added to a coating material prior to application, then the total organic HAP fractions and mass of coating material "as applied" must be adjusted

appropriately to account for such additions. You must calculate the organic HAP content, solids content, and mass of all coating materials applied on the coil coating lines for each monthly period. However, only changes in a material formulation would require a re-determination of total organic HAP mass fraction for that coating material.

If you use an emission capture and control system to comply with compliance option 3 of the standard, you must demonstrate either the OCE or the oxidizer outlet HAP concentration is achieved. Alternatively, in accordance with compliance option 4, you may use capture and control equipment to demonstrate you meet the organic HAP emission rate limit specified. To comply using this approach, you must determine the OCE of the equipment and the organic HAP and solids content of the coating materials applied. These values must be determined for each monthly period and combined to determine the emission rate for each rolling 12-month compliance period.

If you use a capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances, you would use the specified test methods to determine both the efficiency of the capture system and the emission reduction efficiency of the control device (or the oxidizer outlet organic HAP concentration). To determine the capture efficiency, you must either verify the presence of a permanent total enclosure (PTE) using EPA Method 204 of 40 CFR part 51, appendix M (and all coating materials must be applied and dried within the enclosure); or use EPA Method 204A through F of 40 CFR part 51, appendix M, to measure capture efficiency. If you have a PTE and all materials are applied and dried within the enclosure and you route all exhaust gases from the enclosure to a control device, you assume 100 percent capture. To demonstrate compliance using the oxidizer outlet organic HAP concentration limit, 100 percent capture is required.

You must determine the emission reduction efficiency of a control device or the oxidizer outlet organic HAP concentration by conducting a performance test or using a continuous emission monitoring system (CEMS). If you use CEMS to calculate the control efficiency, you must measure both the inlet and outlet concentrations. The CEMS must comply with performance specification 8 or 9 in 40 CFR part 60, appendix B.

If you conduct a performance test, we are requiring that the emission

reduction efficiency of a control device or the oxidizer outlet organic HAP concentration be determined based on three runs, each run lasting 1 hour. Method 1 or 1A of 40 CFR part 60, appendix A is used for selection of the sampling sites. Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A, is used to determine the gas volumetric flow rate. Method 3, 3A, or 3B of 40 CFR part 60, appendix A, is used for gas analysis to determine dry molecular weight. You may also use as an alternative to Method 3B, the manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas in ASME PTC 19-10-1981-Part 10, "Flue and Exhaust Gas Analyses." Method 4 of 40 CFR part 60, appendix A, is used to determine stack moisture. Method 25 or 25A of 40 CFR part 60, appendix A, is used to determine organic volatile matter concentration. You must use Method 25A to demonstrate compliance with the oxidizer outlet organic HAP concentration limit because the limit is less than 50 ppmv. Alternatively, any other test method or data that have been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A, may be used upon obtaining approval by the Administrator. If you use a solvent recovery system, you may choose to determine the OCE using a liquid-liquid material balance instead of conducting an initial performance test. If you use the material balance alternative, you must measure the amount of all coating materials applied in the controlled coating operations served by the solvent recovery system during each month and determine the total volatile matter content of these materials. You must also measure the amount of volatile matter recovered by the solvent recovery system during the month and compare the amount recovered to the amount used to determine the OCE.

2. Monitoring Requirements

Monitoring is required by the standards to ensure that an affected source that does not use CEMS to demonstrate compliance is in continuous compliance. Monitoring requirements apply if you comply with the rule using emission capture and control devices to meet compliance option 3 or 4.

You must establish operating limits as part of the initial performance test of a capture system and control device other than a solvent recovery system for which you conduct liquid-liquid material balances. The operating limits are the minimum or maximum (as applicable) values achieved for capture

systems and control devices during the most recent performance test, conducted under representative conditions, that demonstrated compliance with the emission limits.

The final rule specifies the parameters to monitor for oxidizers, the type of add-on control device most commonly used in the industry. You must install, calibrate, maintain, and continuously operate all monitoring equipment according to manufacturer's specifications and ensure that the continuous parameter monitoring systems (CPMS) meet the requirements in § 63.5150 of today's final rule. If you use control devices other than oxidizers, you must submit the operating parameters to be monitored to the Administrator for approval. The authority to approve the parameters to be monitored is retained by the Administrator and is not delegated to States.

If you use a capture and control system to meet the emission limits and you do not use liquid-liquid material balances to demonstrate compliance, you are required to develop a capture system monitoring plan identifying the operating parameter(s) to be monitored, explaining the appropriateness of the parameter(s) for demonstrating ongoing compliance, and identifying the specific monitoring procedures. The monitoring plan also must establish operating limits at the capture system operating parameter value, or range of values, that demonstrates compliance with the emission limits. The plan must be available for inspection by the permitting authority upon request. You must monitor in accordance with your plan.

After proposal of this NESHAP, we developed criteria to be used for setting operating parameter limits for monitoring capture systems and proposed them in other surface coating NESHAP (see, for an example, the proposal of Subpart NNNN—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances (65 FR 81133). These or similar criteria will be included in implementation materials we are developing for today's final rule as an example that facilities may follow in developing their monitoring plans.

If you use a thermal or catalytic oxidizer, you must continuously monitor the appropriate temperature and record it at least every 15 minutes. For thermal oxidizers, the temperature monitor is placed in the firebox or in the duct immediately downstream of the firebox before any substantial heat exchange occurs. The operating limit is the average temperature measured

during each performance test; for each consecutive 3-hour period, the average temperature must be at or above this limit. For catalytic oxidizers, temperature monitors are placed immediately before and after the catalyst bed. The operating limits are the average temperature just before the catalyst bed and the average temperature difference across the catalyst bed during the performance test. For each 3-hour period, the average temperature and the average temperature difference are required to be at or above these limits. Alternatively, you are allowed to meet only the temperature limit before the catalyst bed if you develop and implement an inspection and maintenance plan for the catalytic oxidizer.

If you operate metal coil coating lines with intermittently-controllable work stations, you must demonstrate that captured organic HAP emissions within the affected source are being routed to the control device by monitoring for potential bypass of the control device. You may choose from the following four monitoring options:

(1) Flow control position indicator to provide a record of whether the exhaust stream is directed to the control device;

(2) Car-seal or lock-and-key valve closures to secure the bypass line valve in the closed position when the control device is operating;

(3) Valve closure continuous monitoring to ensure any bypass line valve or damper is closed when the control device is operating; or

(4) Automatic shutdown system to stop the coil coating operation when flow is diverted from the control device.

A deviation would occur for any period of time the bypass monitoring indicates that emissions are not routed to the control device.

If you use a solvent recovery system, you must conduct monthly liquid-liquid material balances or operate CEMS as described above in the test methods and procedures section of this preamble.

If you use a capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances, you are required to achieve on a continuous basis the operating limits you establish during the performance test. In addition, to demonstrate continuous compliance with compliance option 4, you must record data on the organic HAP and solids content of the coating materials applied to determine the organic HAP emission rate for each compliance period.

G. What Are the Notification, Recordkeeping, and Reporting Requirements?

You are required to comply with the applicable requirements in the NESHAP General Provisions, subpart A of 40 CFR part 63, as indicated in Table 2 to subpart SSSS. The General Provisions notification requirements include: initial notifications, notification of performance test if you are complying using a capture system and control device, notification of compliance status, and additional notifications required for affected sources with continuous monitoring systems. The General Provisions also require certain records and periodic reports.

1. Initial Notification

If you own or operate an existing affected source, you must send a notification to the EPA Regional Office in the region where your facility is located and to your State agency no later than 2 years after June 10, 2002. For new and reconstructed sources, you must send the notification within 120 days after the date of initial startup or 120 days after June 10, 2002, whichever is later. That report notifies us and your State agency that you have an existing affected source that is subject to today's NESHAP or that you have constructed a new affected source. Thus, it allows you and the permitting authority to plan for compliance activities. You also need to send a notification of planned construction or reconstruction of a source that will be subject to the final rule and apply for approval to construct or reconstruct.

2. Notification of Performance Test

If you demonstrate compliance by using a capture system and control device for which you do not conduct a liquid-liquid material balance, you must conduct a performance test. The performance test is required no later than the compliance date for an existing affected source. For a new or reconstructed affected source, the performance test is required no later than 180 days after startup or 180 days after today's date, whichever is later. You must notify us (or the delegated State or local agency) at least 60 calendar days before the performance test is scheduled to begin and submit a report of the performance test results no later than 60 days after the test.

3. Notification of Compliance Status

You must submit a Notification of Compliance Status within 30 days after the end of the initial 12-month compliance period. In the notification, you must certify whether each affected

source has complied with the final standards, identify the option(s) you used to demonstrate initial compliance, summarize the data and calculations supporting the compliance demonstration, and provide information on any deviations from the emission limits, operating limits, or other requirements.

If you elect to comply by using a capture system and control device for which you conduct performance tests, you must provide the results of the tests. Your notification must also include the measured range of each monitored parameter, the operating limits established during the performance test, and information showing whether the source has complied with its operating limits during the initial compliance period.

4. Recordkeeping Requirements

You must keep records of reported information and all other information necessary to document compliance with today's final rule for 5 years. As required under the General Provisions, records for the 2 most recent years must be kept on-site; the other 3 years' records may be kept off-site. Records pertaining to the design and operation of the control and monitoring equipment must be kept for the life of the equipment.

Depending on the compliance option you choose, you may have to keep records of one or more of the following:

- Organic HAP, volatile matter, and solids content of the coating materials, "as purchased" or "as applied."
- Monthly usage of coating materials, organic HAP, volatile matter, and solids and compliance demonstrations using these data.
- Continuous monitoring system measurements.
- Liquid-liquid material balances.

If you demonstrate compliance by using a capture system and control device, you must keep records of the following:

- All required measurements, calculations, and supporting documentation needed to demonstrate compliance with the standards.
- All results of performance tests and parameter monitoring.
- All information necessary to demonstrate conformance with the affected source's SSMP when the plan procedures are followed.
- The occurrence and duration of each startup, shutdown, or malfunction of the emission capture system and control device.
- Actions taken during startup, shutdown, and malfunction that are

different from the procedures specified in the affected source's SSMP.

- Each period during which a CPMS is malfunctioning or inoperative (including out-of-control periods).

Today's final rule requires you to collect and keep records according to certain minimum data requirements for the CPMS. Failure to collect and keep the specified minimum data would be a deviation that is separate from any emission limits or operating limits.

Deviations, as determined from these records, need to be recorded and also reported. A deviation is any instance when any requirement or obligation established by the final rule including, but not limited to, the emission limits and operating limits, is not met.

If you use a capture system and control device to reduce organic HAP emissions, you must make your SSMP available for inspection if the Administrator requests to see it. The plan must stay in your records for the life of the affected source or until the source is no longer subject to the proposed standards. If you revise the plan, you need to keep the previous superseded versions on record for 5 years following the revision.

5. Periodic Reports

Each reporting year is divided into two semiannual reporting periods. If no deviations occur during a semiannual reporting period, you must submit a semiannual report stating that the affected source has been in compliance. If deviations occur, you must include them in the report as follows:

- Report each deviation from the emission limit.
- If you use an emission capture system and control device other than a solvent recovery system for which you conduct liquid-liquid material balances, report each deviation from an operating limit and each time a bypass line diverts emissions from the control device to the atmosphere.
- Report other specific information on the periods of time the deviations occurred.

You also must include in each semiannual report an identification of the compliance option(s) you used for each affected source and the beginning dates you used each compliance option.

6. Other Reports

You are required to submit reports for periods of startup, shutdown, and malfunction of the capture system and control device. If the procedures you follow during any startup, shutdown, or malfunction are inconsistent with your plan, you must report those procedures with your semiannual reports in

addition to immediate reports required by 40 CFR 63.10(d)(5)(ii).

III. What Are the Major Changes We Have Made to the Rule Since Proposal?

This section summarizes the major changes we have made to the rule since proposal. We made the changes to clarify the rule's requirements and to respond to public comments on the proposed rule. A summary of responses to major comments regarding rule requirements is presented in section IV.B of this preamble.

A. Rule Applicability

The rule applicability has been clarified through revisions to the definition of a coil coating line and related definitions and the addition of a paragraph explicitly presenting criteria under which today's rule does not apply to a coil coating line. Also, a paragraph has been added that gives you compliance options if you operate a coating line(s) that coats both coil and foil.

The revised definition of a coil coating line incorporates the proposed definition of coil coating operation (the collection of equipment used to apply an organic coating to the surface of metal coil that is at least 0.15 millimeter (0.006 inch) thick). The definition of coil coating operation has been removed from the final standard. The coating of metal coil for use in flexible packaging (subject to the requirements of 40 CFR part 63, subpart JJJJ) is explicitly exempted from the requirements of today's rule through a revision to the definition of metal coil stating that metal coil does not include metal webs that are coated for use in flexible packaging. A definition of flexible packaging has been added to the final rule. A definition of protective oil, which is identified as a material not considered to be a coating in this subpart, has been added to the final rule to clarify what it includes.

A paragraph that explicitly presents two criteria under which today's rule does not apply to a coil coating line has been added. The first criterion, for a coil coating line that is part of research or laboratory equipment, was proposed in § 63.5100 as an exception to the emission sources affected by this subpart, and has been moved to the applicability statement of § 63.5090. The second criterion, for a coating line that predominantly coats foil (a metal strip that is less than 0.006 inch thick), has been added to the final rule.

The paragraph that has been added provides compliance options for a coating line subject to both this subpart and 40 CFR part 63, subpart JJJJ which

is currently under development. It allows you to comply only with this subpart if you operate a coating line that coats both coil and foil, regardless of the amount of each coated or if you coat only foil but the coating line is controlled by a common control device that also receives organic HAP emissions from a coil coating line that is subject to the requirements of this subpart. Compliance with this subpart would constitute compliance with subpart JJJJ.

B. Emission Standards

The proposed emission rate limit has been revised in the final rule, and an oxidizer outlet concentration limit has been added. Also, the language of the emission standards has been revised to reflect the change in the compliance period from one month to a 12-month compliance period, as is described in section III.D of this preamble.

The proposed emission rate limit would have limited organic HAP emissions to no more than 0.029 kg/l (0.24lb/gal) of solids applied for the month. The final emission rate limit requires that the level of organic HAP be no more than 0.046 kg/l (0.38lb/gal) of solids applied during each 12-month compliance period.

If you use an oxidizer to control organic HAP emissions, the final rule allows you to operate the oxidizer such that an outlet organic HAP concentration of no greater than 20 ppmv by compound on a dry basis is achieved, provided the efficiency of the capture system is 100 percent. This outlet concentration limit provides oxidizers with an alternative to the 98 percent OCE limit.

C. Operating Limits

In response to comments regarding the definition of deviation as it relates to the failure to meet operating parameters, oxidizer monitoring, and the establishment of the operating parameter to be monitored, we have added § 63.5121 entitled "What operating limits must I meet?" to the final rule. This section clarifies that the operating limits must be met at all times after you establish them and presents the applicable operating limits for oxidizers and methods of demonstrating continuous compliance with the operating limits in Table 1 to subpart SSSS.

The catalytic oxidizer operating parameter monitoring requirements have been revised to incorporate the option of catalyst bed inlet and outlet gas temperature monitoring that is described below. Regarding capture system monitoring, the proposed

requirement that you submit your monitoring plan to the Administrator has been revised to require only that you make the monitoring plan available for inspection by the permitting authority upon request.

We have also added a specific operating limits paragraph to section 63.5160 of the final rule to clarify the specific procedures to be followed to establish the operating limits during a performance test. The procedures for establishing the operating limits for a catalytic oxidizer have been corrected in the final rule to require that both the outlet temperature and the inlet temperature to the catalyst bed be used as operating parameters in order to calculate the temperature change across the catalyst bed. In addition, an alternative to this monitoring has been added to the final rule. In lieu of monitoring the inlet and outlet gas temperatures to calculate temperature change across the catalyst bed, you may monitor the gas temperature at the inlet to the catalyst bed and develop and implement an inspection and maintenance plan for the catalytic oxidizer.

D. Compliance Demonstration

Revisions to the proposed compliance demonstration requirements discussed below include explicitly allowing compliance on a line-by-line basis, changing the averaging period for the emission rate limit from a monthly to a rolling 12-month average, revising the definition of the term M_j to exclude water, and removing the 98 percent cap on destruction efficiency in calculating HAP emitted to demonstrate compliance with the emission rate limit.

We intended for the proposed rule to allow line-by-line compliance. This intent has been clarified in the final rule by adding an introductory paragraph to § 63.5170 of the final rule. The introductory paragraph states that you may apply any of the compliance options to an individual coil coating line, or to multiple lines as a group, or to the entire affected source. You may use different compliance options for different coil coating lines, or at different times on the same line, but you may not use different compliance options at the same time on the same coil coating line. Recordkeeping and reporting requirements also are specified if you switch between compliance options.

The compliance period specified for the emission rate limit in the proposed rule was 1 month. The compliance period specified in the final rule is 12 months, and compliance with the emission rate limit is demonstrated on

the basis of a rolling 12-month average. The 12-month compliance period is specified in § 63.5130 of the final rule and also is reflected in the specifications of the initial compliance period and subsequent compliance periods that have been added to this section. The initial compliance period begins on the compliance date and ends on the last day of the 12th month following the compliance date. If the compliance date is not the first day of the month, then the initial compliance period extends through that month plus the next 12 months. For subsequent compliance periods, each month after the end of the initial compliance period is the end of a compliance period consisting of that month and the preceding 11 months.

The term M_j is the mass of solvent, thinner, reducer, diluent, or other nonsolids-containing coating material, j , applied in a month and is used in the mass balance to determine the recovery efficiency of a solvent recovery device. The proposed definition of M_j included water as a nonsolids-containing coating material. The definition of the term M_j in Equation 6 of § 63.5170 of the final rule has been revised to explicitly exclude water.

Finally, the proposed rule capped oxidizer destruction efficiency at 98 percent in calculating organic HAP emitted to demonstrate compliance with the emission rate limit unless performance was demonstrated with CEMS data. The final rule has been revised to allow the use of oxidizer destruction efficiencies greater than 98 percent demonstrated during performance testing, provided the oxidizer has continuously operated within the operating limits established during the performance test.

IV. What Are the Responses to Major Comments?

This section summarizes the major public comments we received on the proposed rule and our responses to those comments. A more comprehensive summary of comments and responses can be found in Docket No. A-97-47.

A. Impacts Analysis

Commenters identified flaws with EPA's impacts analysis and were concerned that inaccuracies in the impact analysis would affect bottom line figures for the costs impacts, secondary air impacts, and achievability of the standards. Two commenters asserted that EPA underestimated oven air flow rates for the model plant analysis due to failing to calculate air flows in standard cubic feet per minute (scfm) rather than actual cubic feet per

minute (acfm), underestimating air flows by 1.5 to 2 times that used for model plant analysis for determining costs. They also claim that upgrading control devices to achieve the 98 percent OCE limit would generate additional air flow that has to be treated by the oxidizer due to installing new PTE with sufficient ventilation to comply with OSHA permissible exposure limits for the mix of solvents used. Failing to include the associated costs underestimates the initial capital investment and annual operating costs of an affected coating line.

Contrary to the commenter's assertion, the flow rates in acfm were derived from Information Collection Request (ICR) information and converted to scfm for the design of oxidizers; therefore, no error was made in this calculation. However, after further analysis comparing the calculated air flow rates to the reported air flow rates for all facilities that reported air flow rates in acfm, we found that model plant air flow rates should have been about 50 percent higher. Therefore, an adjustment factor was developed, resulting in a 50 percent increase in the model plant air flow rates. The adjusted oven air flow rates were used to revise compliance cost estimates. We also reviewed the additional capture measures reported by respondents to the metal coil coating ICR that use PTE. The ICR review revealed that a large majority of facilities reporting existing PTE did not report the use of additional ventilation; only 17 percent reported extra ventilation.

However, we agree that approximately 40 percent more flow is needed for a PTE if it cannot be designed with adequate local exhaust ventilation in the form of hoods and oven extensions to ensure worker safety. Therefore, we developed additional costs to reflect a 40 percent increase in flow for the 17 percent of facilities requiring extra ventilation.

One commenter stated that EPA's PTE costs are significantly underestimated based on a cost summary provided by the commenter for a PTE installed for a tandem coating line in a mezzanine arrangement. The cost summary included costs for reconfiguration of make-up air duct work, new exhaust duct work, a new plant make-up air heater, and explosion proof electrical systems. They assert that EPA estimates neglect these additional costs. Our data analysis revealed that PTE costs for a mezzanine arrangement represent the worst case situation for PTE application. Of the seven facilities in the facility database who use this configuration,

four already have PTE and six comply with one of the compliance options. The seventh mezzanine PTE was under construction. Therefore, no additional costs for this design have been added. The PTE costs we derived represent typical installations; however, we agree with the commenter that electrical fittings used in the presence of flammable solvents should be explosion proof. To account for the additional cost of explosion-proof fittings, the estimated cost of auxiliaries has been increased from 50 to 80 percent of the PTE capital cost. These revised costs were used in revising the compliance cost estimates.

Two commenters believed that many of the assumptions EPA used to determine the cost of upgrading or replacing thermal oxidizers contributed to control system upgrade/replacement costs that are substantially less than what is truly needed. In addition to their comments about gas flow rate estimates for the model plant analysis, they claim the following assumptions should be revised or eliminated: (1) EPA has assumed that costs for duct work, dampers, fans, motors and stacks are not required for a replacement oxidizer, (2) a 20 percent discount is assumed for purchase of two oxidizers in the same order, (3) new oxidizers are assumed to operate with 70 percent heat recovery, which would likely preheat the inlet stream to above auto-ignition temperatures for the VOC involved, and (4) EPA assumed that existing units will be upgraded to achieve higher destruction efficiencies and accommodate increased flow. The commenter claimed that it is much more likely that a facility would choose to replace rather than upgrade a unit given the cost of modifications the commenter asserted to be necessary, including enlarging the combustion chamber, increasing the oxidizer blower capacity, increasing the size of the heat exchanger, and enlarging duct work to handle additional flow.

To address the comments on the costs of upgrading or replacing thermal oxidizers, for cases in which increased flow to the replacement oxidizer is not required, the assumption has been made that new ducting is not required. For cases in which air flow is increased, but a rotary concentrator is installed, the air flow to the oxidizer is not increased but new ducting is needed to route air to the rotary concentrator and from the concentrator to the oxidizer. New costs for the concentrator and associated equipment have been estimated for these cases and any others in which increased ventilation air is required.

Since index values for thermal oxidizers and catalytic oxidizers are

now greater than for most other control devices, discounts may not be available. New costs have been developed that have no discount for the purchase of two oxidizers in the same order.

We reviewed the heat recovery information in the facility database. In addition, we contacted two oxidizer vendors concerning the potential for auto-ignition of the inlet stream. Despite the high heat recovery efficiencies reported by some facilities in the database and the potential for designing recuperative oxidizers to avoid auto-ignition problems, we agree there is still the potential of auto-ignition problems for certain organic compounds used in the metal coil coating industry. Hence, we followed a conservative approach in reevaluating the assumptions used in costing replacement oxidizers. Replacement oxidizers are assumed to achieve a heat recovery of 60 percent versus the 50 percent heat recovery of baseline oxidizers. This number is based on our review of the database balanced by information provided by oxidizer vendors and is appropriate for impact analysis. In actuality, some sources may achieve higher heat recovery and some lower.

In determining whether an existing oxidizer would be upgraded or replaced, we assumed that the useful life of an oxidizer is 15 years based on available information. For sources with oxidizers near the end of their useful lives, we did not attribute the replacement cost to the NESHAP since the source would incur the cost in any case. To account for specific situations where oxidizers are not as old, we costed the addition of PTE which will result in increased flow requirements, and we costed the addition of concentrators. We believe these costing assumptions are reasonable and realistic.

Two commenters claimed that it is not cost effective to push the existing source OCE limit to 98 percent. The commenters stated that the incremental cost of increasing the OCE limit from their proposed 95 percent to 98 percent is approximately \$35,000/ton HAP removed whereas the incremental cost of moving from the current baseline to 95 percent control is approximately \$5,000/ton HAP removed based on an economic assessment done by one of the commenters.

The existing source OCE was not pushed to 98 percent, but rather was determined to be the MACT floor using data available to the Administrator. Consequently, the EPA's economic impact analysis was conducted only for the MACT floor level of 98 percent OCE. The appropriate cost effectiveness analysis considers the cost of reducing

HAP emissions at the MACT floor level of control compared to the baseline level rather than the increment between 95 percent and 98 percent OCE which the commenters suggested. The MACT floor analysis results in a cost effectiveness of approximately \$4,500/ton HAP removed.

One commenter noted that EPA's estimates of the nationwide incremental costs incurred by the coil coating industry to implement the rule were, at proposal, a nationwide total capital investment of \$11.6 million and a total annual cost of \$5.9 million. The commenter strongly disagreed with these cost estimates and cited data from an economic assessment done by their contractor which estimated the total annual incremental costs for the coil coating industry to be approximately \$20.8 million. The commenter believes that EPA's estimate is incorrect because (1) EPA calculated the incremental costs by subtracting baseline costs from the upgrade or replacement cost which they believe assumes the replacement or upgrade would have been necessary for continued compliance with the VOC standards, even in the absence of the new coil NESHAP. (2) The EPA extrapolated nationwide costs by multiplying the model plant costs by the ratio of total HAP emissions reported by all facilities in the facility database divided by the emissions from all plants covered by the model plant analysis. This assumes that EPA has collected HAP emissions data on all existing coil coating lines in the country which is unlikely. (3) The EPA estimated monitoring, recordkeeping, and reporting costs by amortizing certain one time costs over a 15-year period, then adding the annual cost of compliance demonstrations, reports, and recordkeeping. Most permitting agencies would require performance testing, which EPA considered a one time cost, at a greater frequency than 15 years which would cause cost estimates to be understated.

Since we have revised our cost estimates due to corrections needed as described above, our estimated nationwide capital and annual costs have increased (see section V.D of this preamble). The nationwide cost estimates have been revised to incorporate the revised MACT floor costs associated with adding PTE, upgrading or replacing existing oxidizers and installing new condenser systems in some situations as described above. Even with these revisions, EPA's estimated costs are significantly lower than the commenters' costs. The revised nationwide total costs for all plants show an increase in capital costs to

\$18.1 million and an increase in annual costs to \$7.6 million. Regarding the commenters' list of assumptions that should be modified, these assumptions were not changed for the following reason. No assumption concerning continued compliance with VOC standards was made. Estimating upgrade costs as the difference between the baseline and the MACT floor level of control is a technique for deriving incremental costs when detailed site specific data for all sources is not available. The EPA believes that most metal coil surface coating facilities in the country are in the database, therefore, any facilities omitted would lead to a small underestimation of nationwide costs. Finally, regarding the assumption that the control system performance test is a one time cost over the 15-year life of the oxidizer, the NESHAP only requires an initial performance test. Any subsequent testing would not be a result of the NESHAP requirements, but would be at the discretion of the permitting authority. Therefore, the cost of performance testing subsequent to the initial performance test was not attributed to the NESHAP.

One commenter questioned two of the assumptions used by EPA in determining how many facilities will have to make control system upgrades. The commenter submitted that EPA assumed that ten of the facilities would pursue synthetic minor permits and be exempt from the coil NESHAP; however, the commenter believed that there is no certainty in this assumption, as changes in market demand and/or product mix at a facility may require it to pursue a major source title V permit. The commenter also submitted that EPA estimated 26 facilities would be in compliance with the OCE or emission rate limit in the coil NESHAP; however, the commenter believed there are insufficient data to determine whether a facility will be able to comply with the monthly average requirements of the emission rate approach because the ICR data represent annual average emissions of HAP per solids applied, and the equivalent emission rate limit, as proposed, will be enforced on a monthly basis. One commenter noted that EPA's projected HAP emission reduction of 55 percent also appears to be based on the assumption that some facilities could comply with the monthly emission rate limit. The commenter's estimated reduction was based only on achieving 98 percent OCE and was estimated at 77 percent. The commenter believes that the Agency should not rely on speculation of the annual reductions

that will be achieved with the emission rate approach.

The ten facilities that the commenter describes as pursuing synthetic minor permits were facilities in the database reporting being already permitted as synthetic minors. No assumption was made that any facility not permitted as a synthetic minor source would do so to be exempt from the coil NESHAP. The commenter has a valid point that basing the assumption of whether a facility can comply with the emission rate limit during monthly compliance periods on annual emission rate data may be inappropriate. The compliance period for the emission rate limit has been revised to a rolling 12-month period to better reflect the data.

The projected HAP emission reduction (55 percent for the proposed rule; 53 percent for the final rule) is based on assuming that sources would choose the least costly means necessary to achieve either the facility 98 percent OCE or the equivalent emission rate compliance option. We believe it is reasonable to assume that some facilities will choose the emission rate limit as the least costly compliance option, particularly since it has been made less stringent than the proposed limit and since the compliance period has been changed from a monthly average to a rolling 12-month average. The revisions to the emission rate limit will result in a revised estimated HAP emission reduction of 53 percent.

B. Rule Applicability

Two commenters noted that EPA specifies that both the foil coating and the coil coating operations would be subject to the metal coil NESHAP at facilities that perform both foil and coil coating operations on the same equipment. Facilities coating only foil on their coating equipment would be subject to the Paper and Other Webs (POWC) NESHAP currently under development. The commenters suggested several ways to synchronize these two NESHAP including adopting 95 percent OCE as the MACT floor, revising the emission rate limit to reflect a representative coating with a HAP to solids ratio of 80/20, allowing sources to switch between the POWC rule currently under development and the metal coil rule through their title V permits, or specifying that the governing NESHAP be based on a threshold percentage of production time or of total surface area coated.

The metal coil rule as proposed specified that operations performing both foil coating and coil coating on the same equipment would be subject to the metal coil NESHAP only. The CAA

directs EPA to develop standards that require the maximum degree of reduction in emissions of HAP that is achievable for each source category, which are commonly referred to as MACT standards. For existing major sources, MACT must be no less stringent than the average emission limitation achieved by the best performing 12 percent of sources in the source category, which is referred to as the MACT floor. The 98 percent OCE was established using data submitted by coil coating facilities on their ICR. Data from facilities in the metal coil source category indicates that 98 percent is MACT for this source category. Selecting a 95 percent OCE is, therefore, not an option for the MACT floor.

To arrive at the emission rate limit, we used the average volume solids reported by each MACT floor facility. We used a conservative assumption (i.e., tendency to overestimate HAP) that the entire volatile fraction of the coating was HAP to determine the HAP to solids ratio for a representative coating for the metal coil industry. For proposal, this ratio was 60/40. For the final rule, we revised this ratio, using the average of the coatings with the lowest solids content reported by each facility in the MACT floor. This type of coating represents the most adverse circumstance that could reasonably be expected to occur at a floor facility. The resulting HAP to solids ratio is now 70/30. We believe this higher ratio accounts for the range in coatings used by floor facilities and reflects a HAP/solids mix of coatings that is representative for the metal coil coating industry. The resulting emission rate limit is 0.38lb of HAP/gal of solids. The HAP/solids ratio used to establish the proposed emission rate limit for the POWC rule and the final printing and publishing rule were based on information on coating characteristics for each respective source category and is not, according to our data, representative of coatings on average in the metal coil source category.

The commenters proposed that we allow a cutoff limit based on threshold percentage of activity for each source category which would determine the rule with which a facility would comply. Additional data analysis was done to determine the degree to which overlap occurs. Our data analysis revealed there are six facilities in the metal coil MACT database reporting coating application on substrates of thicknesses less than 0.006 inches, which would be considered foil. One facility reported the percentage of foil coating as confidential business information (CBI). Four facilities

reported less than 25 percent foil coating, making coil coating the principal surface coating activity for their coating lines. However, one facility reported at least 85 percent of the substrate being coated as foil, making foil coating the principal surface coating activity for their coating lines. We believe that coating lines for which 85 percent of the substrate coated is foil would be more appropriately covered by the POWC NESHAP. Therefore, using the available data, we have established a special provision for this particular circumstance. If 85 percent or more of the substrate coated on a line, based on surface area, is of a thickness of less than 0.006 inches, then that line will be covered under the POWC NESHAP currently under development and is not subject to the metal coil surface coating NESHAP. We do not anticipate that establishing this primary use provision at 85 percent will result in a significant negative environmental impact. We expect the provision to apply to a limited number of coating lines (less than ten), and the incremental difference in emission reduction achieved at those lines will be no more than three percent (i.e., the difference between the 98 percent OCE achieved by the metal coil rule versus the 95 percent OCE achieved by the POWC rule). We estimate this difference to be approximately 75 tpy.

Facilities that may have coil and foil coated on the same line, regardless of the percentage of surface area, may opt to subject that line to the metal coil surface coating NESHAP. In addition, facilities that have metal coil and foil coated on separate lines at a facility may opt to include all lines under the metal coil NESHAP if the lines are controlled by a common control device. If for any year a line utilizing this cutoff limit and complying with the POWC NESHAP coats more than 15 percent coil substrate based on surface area, that line will from that point forward be subject to the metal coil NESHAP, and will no longer be able to utilize the cutoff limit option. The applicability section of the final rule has been revised accordingly.

The commenters suggested that sources be allowed to switch between rules through their title V permits when their coating substrate changes. To do this, sources would have to keep records of substrate and coating use separately for the POWC and metal coil rules, as well as calculations for compliance demonstrations and reports for each rule. The 85 percent primary use provision allows facilities to comply with the NESHAP representing their principal coating activity.

One commenter submitted that product and packaging companies applying coatings onto continuous metal substrates greater than 0.006 inch thick for flexible packaging should be exempt from the coil coating MACT rule. The commenter noted that the facility and its process equipment is either already subject to the printing and publishing NESHAP or will be subject to the POWC NESHAP.

We agree that the coating of metal substrates for the purpose of flexible packaging is an operation that is covered under the proposed POWC NESHAP. The final rule has been revised to clarify that the metal coil NESHAP does not apply to substrates coated for flexible packaging.

One commenter noted that the proposed applicability section 40 CFR 63.5090 provides that "The provisions of this subpart apply to each facility that is a major source of HAP, as defined in § 63.2, at which a *coil coating line is operated*" (underlined emphasis added). The commenter submitted that the phrase "coil coating line is operated" is not defined and "coil coating line" includes any coating operation, including those operations EPA seeks to exclude in the definition of "coating" in 40 CFR 63.5110. The commenter requested clarification of the proposed applicability section to clearly identify regulated facilities using the terms defined at proposed 40 CFR 63.5110.

We agree with the commenter that the proposed applicability language was not clear. The definition of coil coating line in section 63.5110 has been revised as follows: "coil coating line means a process and the collection of equipment used to apply an organic coating to the surface of a metal coil." The definition of coil coating operation has been removed from that section. This revision addresses the commenter's concern.

Two commenters requested that EPA specifically state in the preamble that all of the equipment included as part of ancillary operations has been evaluated under the metal coil NESHAP and, thus, is exempt from the proposed Miscellaneous Organic NESHAP (MON) (67 FR 16154, April 4, 2002).

The NESHAP to which the commenters refer would regulate coating manufacturing operations and would require controls on the following emission sources: storage tanks, process (mixing) vessels, equipment components, wastewater treatment and conveyance systems, transfer operations, and ancillary sources such as heat exchange systems. As the commenter stated, we evaluated all of the equipment included as part of ancillary operations as we developed

the proposed rule. We requested control and emissions information on these operations as part of our information collection request. However, the information we received was not sufficiently detailed to give a clear picture of the level of control achieved for these operations. For example, mixing can occur at the coating application station inside a PTE, or it can occur at a location away from the application station without an enclosure. If a facility reported achieving 98 per cent control of mixing tanks, it was not clear if all mixing was controlled at this level or only a portion of the mixing. Due to the lack of detailed information available, we were not able to determine a MACT floor for such equipment. Consequently, equipment that is part of ancillary operations is not included in the affected source for these standards.

The proposed MON is not intended to apply to the end users of manufactured coatings. As proposed, it will apply only to sources that manufacture coatings described by SIC codes 285 or 289 or NAICS code 3255. Metal coil coating facilities are not typically in these SIC and NAICS codes and, therefore, would not be subject to the MON, as proposed. If a facility does meet the proposed definition of a coating manufacturer in the MON, its ancillary operations would most likely not meet the criteria used to determine whether controls are required (e.g., the capacity of mixing vessels and storage tanks, or the concentration of total organic HAP in wastewater). The MON preamble specifically requests comment on the costs of controlling emissions and appropriate size cutoffs for coating manufacturers who produce coatings for their own use. Facilities that are potentially affected by the proposed MON or concerned about how it may apply to coating users may view comments received on the MON proposal by accessing Docket Number A-96-04.

C. Definitions

Several commenters submitted that the definition of "deviation" in the proposed rule is very broad or overly complicated and requested that the definition be deleted. The commenters are concerned that all deviations may be considered violations of the standards. Two commenters requested that in place of the term "deviation," we include a definition for "excursion" or "monitoring excursion."

We are using the term "deviation" to standardize the regulatory language used in NESHAP and to avoid any confusion that might be caused by using multiple, related terms such as excess

emission, exceedence, excursion, and deviation in the same regulatory program. In the final rule, the definition of deviation clarifies that any failure to meet an emission limitation (including an operating limit or work practice standard) is a deviation, regardless of whether such a failure is specifically excused or occurs at times when the emission limitations do not apply, for example, during startup, shutdown, or malfunction. The enforcement authority determines violations. The definition of deviation is consistent with the use of the term deviation in the title V operating permit program.

D. MACT Floor Determination

One commenter asserted that the approach followed by EPA in setting the OCE MACT floor was flawed and proposed an alternative approach to setting the MACT floor. The commenter points out that the CAA gives EPA no direction on how to determine which sources are "best performing," accordingly, EPA has maximum flexibility in making that determination. In the commenter's approach, the plants in their database operating with add-on controls were sorted from the lowest to the highest post-control HAP emissions in terms of lbs of HAP per lbs of solids applied. The OCE was calculated for each facility, and the arithmetic mean of the best performing 12 percent of the data set was calculated at 93.6 percent. The commenter asserts that this approach to setting the MACT floor is more appropriate than EPA's method because it better defines the "best performing sources," basing performance on the amount of HAP emitted per solids applied rather than just focusing on OCE. The commenter claims that this approach also generates a more diverse group of coating lines in the MACT floor facilities than EPA's method. The commenter submitted that EPA followed a flexible approach in setting MACT floors for other NESHAP because of the diversity of industry sectors and types and formulation of coatings used, diversity that is also found in the coil coating industry.

We agree that we have flexibility in determining what constitutes the best-performing 12 percent of sources; however, using the methodology proposed by the commenter erroneously accepts that low post-controlled emissions is the result of OCE alone. Post-controlled emissions most often reflect a combination of low-HAP coating formulation and OCE. Given the nature of the metal coil surface coating process and the prevalence of add-on controls in the industry, we determined that ranking facilities by the highest

level of control their control devices achieve is the correct method of establishing the best performers. This methodology generated a universe of floor facilities that represents the diversity of facilities in the industry. The floor facilities coat the range of product types found in the metal coil coating source category.

Several commenters asserted that the proposed OCE of 98 percent is too stringent for existing sources. The commenters supported an OCE of 95 percent for existing sources and 98 percent for new sources. The commenters submitted that thermal oxidation (the overwhelming choice for VOC/HAP control in the coil coating industry) is limited to achieving 98 percent destruction efficiency for new, properly designed units and that existing thermal and catalytic oxidizers cannot achieve 98 percent destruction efficiency on a long-term, continuous basis.

The EPA used data submitted by coil coating facilities on their ICR as the primary basis for establishing a 98 percent OCE. Reported values show that these control systems are capable of achieving greater than 99 percent HAP destruction, based on 100 percent capture and greater than 99 percent destruction efficiencies. The average reported OCE of the MACT floor facilities is 99.4 percent. To determine the level of emission control that is consistently achievable with this technology, we also considered the level of control that the EPA has generally found to be achievable. In addition to general EPA guidance, available literature was reviewed and state agencies and vendors of control equipment were contacted (docket No. A-97-47) for further information indicating the appropriate control efficiency for thermal oxidizers. All of these sources indicate that thermal oxidizers routinely achieve destruction efficiencies of at least 98 percent.

With respect to the performance of catalytic oxidizers, for inlet concentrations greater than 100 ppm, catalytic oxidizers can achieve 95 to 98 percent destruction (docket No. A-97-47). Though 95 percent destruction is typical, 98 percent can be achieved through the use of larger catalyst volumes and/or higher temperatures.

E. Achievability of the Standards

Several commenters submitted that the emission rate limit should be less restrictive. One commenter presented an alternative emission rate proposal based on upper-bound HAP formulation. Under the commenter's proposal, the average minimum solids content for the

eleven floor facilities is 29.1 percent solids by volume. Therefore, the commenters request that EPA use a representative coating of 30 percent solids and 70 percent HAP to derive the equivalent emission rate compliance option instead of the 40 percent solids and 60 percent HAP ratio used for the proposed standard. The representative coating would then yield a precontrol emission rate of 18.5 lbs HAP/gal solids applied, which then generates an equivalent emission rate of 0.37 lb HAP/gal solids applied when factored by the 98 percent OCE. The commenters also requested that the compliance averaging period be a 12-month rolling average. This would account for the use of annual average data in the derivation of the equivalent emission rate and the significant variability in the types of coatings toll coaters typically apply over a 1-year period.

We agree with the commenter that in this case, the emission rate limit should be a rolling 12-month emission rate because the data on which the limit was set reflect annual averages and some segments of the coil coating industry may experience significant variation from month to month in types of coatings used and their HAP contents. This revision has been incorporated into § 63.5170 of the final rule. In addition, we agree that the alternative emission rate limit and compliant coating option should be revised to reflect the average of the lowest solids/highest HAP applied by the MACT floor facilities in the database. The revised emission rate limit and compliant coating option is 0.38 lb of HAP per gallon of solids applied during each 12-month compliance period.

Several commenters submitted that EPA has proposed a single set of emission standards to regulate the entire coil coating industry, thereby failing to account for the significant diversity in various segments of the industry. One commenter requested that EPA subcategorize or, at a minimum, set different emission limits for different types of coil coating operations based on coating use (water-borne or solvent-borne), end use industrial sector or the type of coating business (toll coating versus captive coating). Two of the commenters note that EPA specifically requested comment on the appropriateness of requiring the proposed emission limits for electrodeposition coating (e-coat) lines using water-borne coatings that comply with NSPS and reasonably available control technology (RACT) VOC limits. One commenter added that the MACT floor facilities on which the emission limits are based are comprised of a

disproportionate number of coating lines that produce stock for architectural and building products, a segment of the coil coating industry characterized by application of solvent-borne coatings with significant HAP content and use of enhanced VOC control systems.

We agree with the commenters that there is some diversity in the industry and designed the standard with sufficient flexibility to accommodate that diversity. It was based on emission control levels achieved by the MACT floor facilities which included most segments of the industry. The emission standard is in two different formats and allows four options for demonstrating compliance, providing significant compliance flexibility for the various segments of the industry. The various options for demonstrating compliance with the emission rate limit provide viable alternatives for facilities using water-borne coatings, electrodeposition coating lines, or solvent borne coatings with relatively higher solids and lower HAP contents than facilities that choose to comply with the 98 percent OCE. To account for the variability in coatings used from month to month and to allow for the most adverse conditions that could be expected, we revised the emission rate limit and compliant coating option to reflect the lowest levels of solids used at facilities over a year. In addition to this, the final rule provides a rolling 12-month compliance period over which emission rates are determined rather than a block month compliance period. These allowances and adjustments to the final rule provide greater flexibility for compliance than subcategorization or dividing facilities into sectors and setting a separate limit for each sector.

One commenter submitted that due to differences in operations and coating type, water-based deck lines with in-line tandem coating and roll forming operations must be considered separately from and treated differently than traditional coil coating lines using solvent-based coatings and requested that a water-based compliant emission rate alternative of 0.518 lb of HAP/gal of solids applied (i.e., 0.062 kg/l) be established because it is the lowest water-based HAP emission rate commercially demonstrated for all colors and all seasons of the year.

A compliant coating option in the form of an emission rate was included in the proposed rule and has been revised to be less stringent in the final rule. The final emission rate is 0.38 lb organic HAP per gallon of coating solids applied, averaged over a 12-month period. This compliance option was included as a pollution prevention

alternative for facilities using coatings that contain lower levels of HAP so that the application of controls like those needed for higher-HAP coating operations would not be necessary. Of the six facilities in the MACT database operating water-based deck lines, at least two of the facilities should be able to comply using this option without reformulating coatings or applying any controls. Data submitted by the remaining four deck facilities indicate that they will need neither oxidizers nor PTE to achieve the emission rate limit. They would be able to achieve the needed emission reductions using other options such as reformulation or solvent recovery. The commenter suggested an emission rate limit of 0.518 lb HAP per gallon of coating solids applied because purportedly, it is the lowest rate that can be achieved for all colors and for all seasons. We believe the final emission rate of 0.38 lb/gallon is achievable, in part, because the standard allows averaging of all coatings across a 12-month period. Thus, a source would be able to offset usage of higher-HAP coatings, such as the one the commenter describes, with usage of lower-HAP coatings at other times in order to average below the emission rate limit over 12 months. Therefore, given the compliance alternatives, EPA believes that the final rule provides sufficient flexibility for sources such as these to comply.

F. Monitoring

Three commenters submitted that it is inappropriate to use the catalyst bed outlet temperature as a continuous compliance operating parameter because the temperature rise across the bed is a function of the total VOC loading to the oxidizer. One of the commenters noted that the preamble discussion of monitoring requirements for catalytic incinerators (65 FR 44619) stated that the facility must establish operating parameters as the minimum gas temperatures both upstream and downstream of the catalyst bed; the appropriate section of the proposed Coil NESHAP (§ 63.5160(d)(3)) stated that the operating parameter for a catalytic oxidizer is limited to the minimum gas temperature at the inlet to the catalyst bed.

Our intent was to include in § 63.5160(d)(3) of the proposed rule that both the outlet temperature and the inlet temperature be used as the operating parameters for catalytic oxidizers, in order to calculate the temperature change across the catalyst bed. This temperature change is indicative of catalyst activity. The final rule has been corrected to agree with the proposal

preamble discussion and to clarify the original intent. Also, an alternative to this monitoring has been added to the rule. In lieu of monitoring the inlet and outlet gas temperatures to calculate temperature change across the catalyst bed, facilities may meet a minimum gas temperature at the inlet to the catalyst bed established during the performance test and develop and implement an inspection and maintenance plan for the catalytic oxidizer.

One commenter noted that there are no specifications for monitoring system accuracy, calibration frequency, etc. in § 63.5150(a)(4) of the rule for capture systems. The commenter submitted that the standard should spell out what monitoring should be done, how to set the operating parameters (including appropriate averaging time) and specify reporting for various capture system options as it does for control equipment options.

At the time of proposal of this NESHAP, we had not developed criteria for the monitoring of capture systems and proposed some minimum criteria for facilities to follow to develop monitoring plans for their site-specific conditions. After proposal of this NESHAP, we developed criteria to be used for setting operating parameter limits for monitoring capture systems. These criteria will be included in implementation materials we are developing for the final metal coil surface coating rule as an example that facilities may follow in developing their monitoring plans.

G. Administrative Requirements

One commenter asserted that EPA's conclusion that the coil coating MACT proposal was not a significant regulatory action subject to Office of Management and Budget (OMB) review under Executive Order 12866 is wrong because it is in direct conflict with express CAA provisions requiring the reduction of ozone precursors such as NO_x and with the avowed policies of the Clinton-Gore Administration to reduce greenhouse gas emissions. The commenter asserts, in the terms set forth in the Executive Order, EPA's 98 percent OCE standard creates a "serious inconsistency or otherwise interferes" with actions taken or planned by EPA, by other agencies, and by the President to reduce ozone concentrations across the country and to reduce greenhouse gas emissions. Additionally, the commenter alleges the 98 percent OCE, at a minimum, raises "novel legal or policy issues" regarding whether EPA has made the correct choice between HAP emissions and NO_x and carbon dioxide emissions. The commenter estimates that establishing a

98 percent OCE limit instead of their proposed 95 percent OCE will cause approximately 230 tpy additional NO_x and 279,000 tpy additional carbon dioxide per year to reduce HAP emissions by an incremental 590 tpy. Accordingly, the commenter asserts that EPA must submit the coil coating MACT standard to OMB review under the terms of the Executive Order.

We do not agree that the coil coating NESHAP is a significant regulatory action subject to OMB review under Executive Order 12866. It does not meet any of the criteria for such a classification, including the "novel legal or policy issues" criterion. The EPA's estimates for NO_x and CO₂ emissions increases resulting from the standard are significantly lower than the commenter's estimates. We estimate these increases to be about 3 percent above baseline emissions, while HAP emissions reductions of 53 percent will be achieved by this standard. Therefore, the final metal coil NESHAP was not submitted to OMB for review.

The commenter believes that EPA also incorrectly determined that the coil coating standard would not significantly impact a substantial number of small entities. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), requires Federal regulatory agencies to determine whether a proposed or final regulation will have a significant impact on a substantial number of small entities. According to "EPA Interim Guidance for Implementing the Small Business Regulatory Enforcement Fairness Act and Related Provisions of the Regulatory Flexibility Act" (EPA, 1997f), current Agency policy is to implement the RFA as written; that is, "regulatory flexibility analyses as specified by the RFA will not be required if the Agency certifies that the rule will not have significant economic impact on a substantial number of small entities." However, it remains Agency policy that, even when the Agency makes a certification of "no significant impact," program offices should assess the impact of every rule on small entities and minimize any impact to the extent feasible, regardless of the size of the impact or the number of small entities affected.

In accordance with SBREFA and Agency guidance, a screening analysis was conducted for the MACT floor and its projected costs to determine if the rule imposed a significant impact on a substantial number of small entities. The Agency also calculated the share of annual compliance cost relative to baseline sales for each company. This approach is consistent with

recommended criteria from EPA's Guidance on Implementing SBREFA and RFA for evaluating the economic impact of a rule on small entities. These results do not support a claim of significant impact on a substantial number of small businesses.

V. What Are the Environmental, Energy, Cost, and Economic Impacts?

As explained below, we do not expect any significant adverse environmental or energy impacts resulting from the final rule. Any negative economic impacts are also expected to be small. Actual compliance costs will depend on each source's existing equipment and the modifications made to comply with the standard. We have estimated that the installation of PTE and the installation of, or improvement to, thermal oxidizers at existing facilities could require nationwide capital costs of approximately \$18.1 million and annual costs of about \$7.6 million. Costs could be much lower if facilities choose to use low-HAP coatings.

A. What Are the HAP Emissions Reductions?

For existing sources in the metal coil coating industry, the nationwide baseline HAP emissions are estimated to be 2,258 Mg/yr (2,484 tpy). We estimate that implementation of the final rule will reduce emissions from these sources by 1,198 Mg/yr (1,318 tpy), or approximately 53 percent.

Since the emission limits for new and existing sources are the same, emission reductions for new sources are expected to be similar to the 53 percent emission reduction estimated for existing sources.

B. What Are the Secondary Environmental Impacts?

Secondary environmental impacts are considered to be any air, water, or solid waste impacts, positive or negative, associated with the implementation of the final standards. These impacts are exclusive of the direct organic HAP air emission reductions discussed in the previous section.

Most of the organic HAP are VOC. Capture and control of HAP that are presently emitted will result in a decrease in VOC emissions. In addition, the emission control systems used to reduce HAP emissions will reduce non-HAP VOC emissions as well. We do not have information on non-HAP VOC emissions from metal coil coating operations; consequently, we cannot quantify the reduction of VOC emissions. However, the percent reduction should be similar to the percent reduction in HAP emissions (i.e., about 53 percent). Emissions of

VOC have been associated with a variety of health and welfare impacts. The VOC emissions, together with nitrogen oxides, are precursors to the formation of ground level ozone, or smog. Exposure to ambient ozone is responsible for a series of public health impacts such as alterations in lung capacity and aggravation of existing respiratory disease. Ozone exposure can also damage forests and crops.

The use of newly installed or upgraded control devices will result in greater electricity consumption. Increases in emissions of nitrogen oxides, sulfur dioxide, carbon monoxide, and carbon dioxide, as well as certain HAP, from electric utilities could result. In the metal coil coating industry, some plants will comply by installing or upgrading oxidizers. Supplemental fuel, typically natural gas, will be used, particularly for thermal oxidizers. Combustion of this fuel will result in additional carbon dioxide emissions and may result in additional emissions of nitrogen oxides and carbon monoxide. We estimate that if increases in these emissions occur, they will be small (about three percent above baseline).

A small number of facilities using waterborne coatings may install condenser systems to comply with the standard. This would result in the generation of wastewater streams that may require treatment to remove the HAP. It also is expected that some metal coil coating facilities will comply with the proposed standard by substituting non-HAP materials for HAP presently in use. In some cases, the non-HAP materials may be VOC, however, in other cases, non-VOC (e.g., water) materials may be used. Facilities converting to waterborne materials as a means or partial means of compliance may have reduced Resource Conservation and Recovery Act hazardous waste disposal if the status of the waste material changes from hazardous to nonhazardous. An increase in wastewater discharge may occur if waste material and waterborne wash-up materials are discharged to publicly owned treatment works.

New and upgraded catalytic oxidizers will require catalysts. Catalyst life is estimated to be more than 10 years. Spent catalysts will represent a small amount of solid waste, and sometimes the spent catalyst will be regenerated by the manufacturer for reuse. Activated carbon used in solvent recovery systems is returned to the manufacturer at the end of its useful life and converted to other salable products. Little solid waste impact is expected from this source.

C. What Are the Energy Impacts?

The operation of new and upgraded control devices will require additional energy. Capture of previously uncontrolled solvent-laden air will require fan horsepower. Operation of oxidizers, particularly thermal oxidizers, may require supplemental fuel (typically natural gas).

The total additional electrical energy required to meet the standard is estimated to be 2.3 million kilowatt-hours per year. Nationwide incremental natural gas usage is expected to increase by approximately 170 million standard cubic feet per year.

D. What Are the Cost Impacts?

The total nationwide capital and annualized costs (1997 dollars) attributable to compliance with the final standards have been estimated for existing sources. These costs are based on model plant analysis of the least-cost measure using HAP emission controls needed for facilities to attain one of the compliance options. For existing facilities, with the exception of facilities applying waterborne coatings that do not meet the emission rate limit, the compliance costs represent the incremental costs associated with upgrading existing HAP emission controls.

Compliance Costs for New Sources. Since the HAP emission limits for existing and new sources are the same, the incremental costs required to replace existing HAP emission controls are an indication of the incremental costs (above baseline level controls) that will be incurred by new sources to install and operate the level of HAP emission controls required to achieve the emission limits. For example, for a small coating line with one application station enclosed by a PTE and a thermal oxidizer to control HAP emissions, the incremental capital costs are estimated to be about \$184,000, and the annual costs including monitoring, recordkeeping, and reporting costs approximately \$73,000. Similarly, for a large coating line with two application stations enclosed by PTE and two thermal oxidizers, the incremental capital costs are estimated to be about \$392,000 and the annual costs around \$174,000, including monitoring, recordkeeping, and reporting costs. A coating line applying waterborne coatings is estimated to incur capital costs of around \$1,008,000 and annual costs of approximately \$371,000, including monitoring, recordkeeping, and reporting to install and operate a condenser system to control HAP emissions.

The incremental costs incurred for coating lines controlled by thermal incinerators include retrofit factors, and, thus, for new sources the incremental costs are probably overstated. Nonetheless, the estimated costs should not deter the construction of new metal coil coating lines or the entry of new companies into the industry.

Capital Costs for Existing Sources.

Capital costs will be incurred by installing capture and control systems at those facilities presently without controls and upgrading capture and control systems at existing facilities that do not meet the final standard. Additionally, the purchase of monitoring equipment may be needed as a capital investment to meet the monitoring, recordkeeping, and reporting requirements of the NESHAP. Total nationwide capital costs are estimated at \$18.1 million, based on the use of PTE, thermal oxidizers, solvent recovery systems, and monitoring equipment. The total nationwide capital costs with other methods of control are expected to be lower.

Annual Costs at Existing Sources.

Total nationwide annual costs of the final standard have been estimated at approximately \$7.6 million per year with the use of PTE and new or upgraded thermal oxidizers or solvent recovery systems. These costs include capital recovery over a 15-year period, operating costs for the newly installed and upgraded capture and control systems, and costs for monitoring, recordkeeping, and reporting. These are net costs after taking into account the costs presently being incurred for the baseline control level. The total nationwide annual costs with methods of control other than thermal oxidizers are expected to be lower.

E. What Are the Economic Impacts

The Economic Impact Analysis (EIA) (included in the background information document (BID), EPA 453/P-00-001) shows that the expected price increase for coated metal coils would be approximately 0.2 percent as a result of the proposed standards. Therefore, no adverse impact is expected to occur for those industries that consume coated metal coils such as building and construction, appliances, automotive parts, and other consumer products.

The distribution of costs across metal coil coating facilities is slanted toward the lower impact levels with many facilities incurring no costs or only those related to initial performance testing and annually recurring monitoring, recordkeeping, and reporting. The EIA indicates that these

regulatory costs are expected to represent less than 1 percent of the value of coating services, which should not cause producers to cease or alter their current operations. Hence, no firms or facilities are at risk of closure because of the proposed standards. For more information, consult the docket for this project.

IV. What Are the Administrative Requirements?

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is "significant" and therefore subject to review by 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" because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

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 Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, the EPA did consult with State and local officials to enable them to provide timely input in the development of 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 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The final rule does not have tribal implications, as specified in Executive Order 13175. No tribal governments own or operate metal coil coating operations. Thus, Executive Order 13175 does not apply to this final 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 Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. Today's rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks and because it is not "economically significant."

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

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

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, 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 to the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small

government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this 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 rule does not impose any enforceable duties on State, local, or tribal governments, i.e., they own or operate no sources subject to this rule and, therefore, are not required to purchase control systems to meet the requirements of this rule. Regarding the private sector, EPA believes the rule will affect approximately 90 existing facilities nationwide. The EPA projects that annual economic effects will be \$7.6 million. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. Nevertheless, in developing this rule, EPA consulted with States to enable them to provide meaningful and timely input in the development of this rule.

In addition, the EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's rule is not subject to the requirements of section 203 of the UMRA.

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 RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business according to Small Business Administration (SBA) size standards by NAICS code of the owning entity (in this case, ranging from 100-1,000

employees; see table below); (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.

In accordance with the RFA and SBREFA, EPA conducted an assessment of the standard on small businesses within the metal coil coating industry. Based on SBA size definitions and reported sales and employment data, EPA identified 19 of the 49 companies owning metal coil coating facilities as small businesses. Although small businesses represent almost 39 percent of the companies within the source category, they are expected to incur only 8.5 percent of the total industry compliance costs of approximately \$6.0 million. The average annual compliance cost share of sales for small businesses is less than 0.2 percent with 7 of the 19 small businesses not expected to incur any additional costs because they are permitted as synthetic minor HAP emission sources. After considering the economic impacts of today's rule on small entities, we determined that this action will not have a significant economic impact on a substantial number of small entities.

Although this rule will not have a significant economic impact on a substantial number of small entities, we nonetheless tried to limit its impact on small entities. For example, the requirements of the rule only apply to major sources as defined in 40 CFR part 63 and a title V or part 70 permit application can be used in lieu of an initial notification under certain conditions. Also, during the background information development phase of the rulemaking, numerous stakeholder meetings were held at which input was solicited from small entities.

H. Paperwork Reduction Act

The information collection requirements in this rule will be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, et seq. An ICR document has been prepared by EPA (ICR No. 1957.01) and a copy may be obtained from Sandy Farmer by mail at the Collection Strategies Division (2822), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by email at farmer.sandy@epa.gov, 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 are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The public burden of monitoring, recordkeeping, and reporting for this collection is estimated to average 281 hours per year per coil coating facility for each year after the date of promulgation of the rule including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Monitoring, recordkeeping, and reporting costs also include the startup costs associated with initial performance tests and associated notifications and reports required to demonstrate initial compliance; emission rate limit monthly compliance determinations; semiannual reports when someone does not follow a plan for startups, shutdowns, and malfunctions; quarterly and semiannual reports on excess emissions; maintenance inspections; notices; and recordkeeping. The total annualized costs associated with monitoring, recordkeeping, and reporting have been estimated at \$784,179 which include the estimated annualized capital costs of \$232,076.

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

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division (2822), U.S. EPA, 1200 Pennsylvania Ave., NW, Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503 marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after June 10, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by June 10, 2002.

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 No. 104-113; 15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

This rulemaking involves technical standards. The EPA cites the following standards in this rule: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 24, 25, 25A, 204, 204A-F, and 311. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 204, 204A through 204F, and 311. The search and review results have been documented and are placed in the docket (docket No. A-97-47) for this rule.

The three voluntary consensus standards described below were identified as acceptable alternatives to

EPA test methods for the purposes of this rule.

The voluntary consensus standard ASME PTC 19-10-1981-Part 10, "Flue and Exhaust Gas Analyses," is cited in this rule for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas. This part of ASME PTC 19-10-1981-Part 10 is an acceptable alternative to Method 3B.

The two voluntary consensus standards, ASTM D2697-86 (Reapproved 1998) "Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings" and ASTM D6093-97 "Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer," are cited in this rule as acceptable alternatives to EPA Method 24 to determine the volume solids content of coatings. Currently, EPA Method 24 does not have a procedure for determining the volume of solids in coatings. These standards augment the procedures in Method 24, which currently states that volume solids content be calculated from the coating manufacturer's formulation.

Six voluntary consensus standards: ASTM D1475-90, ASTM D2369-95, ASTM D3792-91, ASTM D4017-96a, ASTM D4457-85 (Reapproved 91), and ASTM D5403-93 are already incorporated by reference in EPA Method 24. Five voluntary consensus standards: ASTM D1979-91, ASTM D3432-89, ASTM D4747-87, ASTM D4827-93, and ASTM PS9-94 are incorporated by reference in EPA Method 311.

In addition to the voluntary consensus standards EPA proposes to use in this rule, the search for emissions measurement procedures identified 11 other voluntary consensus standards. The EPA determined that nine of these 11 standards identified for measuring emissions of the HAP or surrogates subject to emission standards in this rule were impractical alternatives to EPA test methods for the purposes of this rule. Therefore, EPA does not intend to adopt these standards for this purpose. The reasons for this determination for the nine methods are discussed below.

The voluntary consensus standard ASTM D3154-00, "Standard Method for Average Velocity in a Duct (Pitot Tube Method)," is impractical as an alternative to EPA Methods 1, 2, 2C, 3, 3B, and 4 for the purposes of this rulemaking since the standard appears to lack in quality control and quality assurance requirements. Specifically, ASTM D3154-00 does not include the

following: (1) Proof that openings of standard pitot tube have not been plugged during the test; (2) if differential pressure gauges other than inclined manometers (e.g., magnehelic gauges) are used, their calibration must be checked after each test series; and (3) the frequency and validity range for calibration of the temperature sensors.

The voluntary consensus standard ASTM D3464-96 (2001), "Standard Test Method Average Velocity in a Duct Using a Thermal Anemometer," is impractical as an alternative to EPA Method 2 for the purposes of this rulemaking primarily because applicability specifications are not clearly defined, e.g., range of gas composition, temperature limits. Also, the lack of supporting quality assurance data for the calibration procedures and specifications, and certain variability issues that are not adequately addressed by the standard limit EPA's ability to make a definitive comparison of the method in these areas.

The voluntary consensus standard ISO 10780:1994, "Stationary Source Emissions-Measurement of Velocity and Volume Flowrate of Gas Streams in Ducts," is impractical as an alternative to EPA Method 2 in this rulemaking. The standard recommends the use of an L-shaped pitot, which historically has not been recommended by EPA. The EPA specifies the S-type design which has large openings that are less likely to plug up with dust.

Two voluntary consensus standards, EN 12619:1999 "Stationary Source Emissions-Determination of the Mass Concentration of Total Gaseous Organic Carbon at Low Concentrations in Flue Gases—Continuous Flame Ionization Detector Method" and ISO 14965:2000(E) "Air Quality-Determination of Total Nonmethane Organic Compounds-Cryogenic Preconcentration and Direct Flame Ionization Method," are impractical alternatives to EPA Method 25 and 25A for the purposes of this rulemaking because the standards do not apply to solvent process vapors in concentrations greater than 40 ppm (EN 12619) and 10 ppm carbon (ISO 14965). Methods whose upper limits are this low are too limited to be useful in measuring source emissions, which are expected to be much higher.

The voluntary consensus standard, CAN/CSA Z223.2-M86 (1986), "Method for the Continuous Measurement of Oxygen, Carbon Dioxide, Carbon Monoxide, Sulphur Dioxide, and Oxides of Nitrogen in Enclosed Combustion Flue Gas Streams," is unacceptable as a substitute for EPA Method 3A since it does not include quantitative specifications for measurement system

performance, most notably the calibration procedures and instrument performance characteristics. The instrument performance characteristics that are provided are nonmandatory and also do not provide the same level of quality assurance as the EPA methods. For example, the zero and span/calibration drift is only checked weekly, whereas the EPA methods requires drift checks after each run.

Two very similar standards, ASTM D5835-95, "Standard Practice for Sampling Stationary Source Emissions for Automated Determination of Gas Concentration," and ISO 10396:1993, "Stationary Source Emissions: Sampling for the Automated Determination of Gas Concentrations," are impractical alternatives to EPA Method 3A for the purposes of this rulemaking because they lack in detail and quality assurance/quality control requirements. Specifically, these two standards do not include the following: (1) Sensitivity of the method; (2) acceptable levels of analyzer calibration error; (3) acceptable levels of sampling system bias; (4) zero drift and calibration drift limits, time span, and required testing frequency; (5) a method to test the interference response of the analyzer; (6) procedures to determine the minimum sampling time per run and minimum measurement time; and (7) specifications for data recorders, in terms of resolution (all types) and recording intervals (digital and analog recorders, only).

The voluntary consensus standard ISO 12039:2001, "Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods," is not acceptable as an alternative to EPA Method 3A. This ISO standard is similar to EPA Method 3A, but is missing some key features. In terms of sampling, the hardware required by ISO 12039:2001 does not include a 3-way calibration valve assembly or equivalent to block the sample gas flow while calibration gases are introduced. In its calibration procedures, ISO 12039:2001 only specifies a two-point calibration while EPA Method 3A specifies a three-point calibration. Also, ISO 12039:2001 does not specify performance criteria for calibration error, calibration drift, or sampling system bias tests as in the EPA method, although checks of these quality control features are required by the ISO standard.

Two of the 11 voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of this rule because they are under development by a voluntary consensus body: ASME/BSR

MFC 13M, "Flow Measurement by Velocity Traverse," for EPA Method 2 (and possibly 1); and ASME/BSR MFC 12M, "Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters," for EPA Method 2.

Section 63.5160 to subpart SSSS of this standard list the EPA testing methods included in the regulation. Under § 63.7(f) of Subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods in place of any of the EPA testing methods.

J. Congressional Review Act

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

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: May 15, 2002.

Christine Todd Whitman,
Administrator.

For 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. Section 63.14 is amended by revising paragraph (b) introductory text and adding new paragraphs (b)(24) and (25) and (j) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(b) The following materials are available for purchase from at least one of the following addresses: American

Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428-2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.

* * * * *

(24) ASTM D2697-86(1998) (Reapproved 1998), Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, IBR approved for § 63.5160(c).

(25) ASTM D6093-97, Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer, IBR approved for § 63.5160(c).

* * * * *

(j) The following material is available for purchase from at least one of the following addresses: ASME International, Orders/Inquiries, P.O. Box 2300, Fairfield, NJ 07007-2300; or Global Engineering Documents, Sales Department, 15 Inverness Way East, Englewood, CO 80112; ANSI/ASME PTC 19.10-1981, Flue and Exhaust Gas Analyses, IBR approved for § 63.5160(d)(1)(iii).

3. Part 63 is amended by adding subpart SSSS to read as follows:

Subpart SSSS—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil

Sec.

What This Subpart Covers

- 63.5080 What is in this subpart?
- 63.5090 Does this subpart apply to me?
- 63.5100 Which of my emissions sources are affected by this subpart?
- 63.5110 What special definitions are used in this subpart?

Emission Standards and Compliance Dates

- 63.5120 What emission standards must I meet?
- 63.5121 What operating limits must I meet?
- 63.5130 When must I comply?

General Requirements for Compliance with the Emission Standards and for Monitoring and Performance Tests

- 63.5140 What general requirements must I meet to comply with the standards?
- 63.5150 If I use a control device to comply with the emission standards, what monitoring must I do?
- 63.5160 What performance tests must I complete?

Requirements for Showing Compliance

- 63.5170 How do I demonstrate compliance with the standards?

Reporting and Recordkeeping

- 63.5180 What reports must I submit?
- 63.5190 What records must I maintain?

Delegation of Authority

- 63.5200 What authorities may be delegated to the States?
- 63.5201-63.5209 [Reserved]

Tables to Subpart SSSS of Part 63

Table 1 to Subpart SSSS of Part 63. Operating Limits if Using Add-on Control Devices and Capture System

Table 2 to Subpart SSSS of Part 63.

Applicability of General Provisions to Subpart SSSS

What This Subpart Covers

§ 63.5080 What is in this subpart?

This subpart describes the actions you must take to reduce emissions of hazardous air pollutants (HAP) if you own or operate a facility that performs metal coil surface coating operations and is a major source of HAP. This subpart establishes emission standards and states what you must do to comply. Certain requirements apply to all who must comply with the subpart; others depend on the means you use to comply with an emission standard.

§ 63.5090 Does this subpart apply to me?

(a) The provisions of this subpart apply to each facility that is a major source of HAP, as defined in § 63.2, at which a coil coating line is operated, except as provided in paragraph (b) of this section.

(b) This subpart does not apply to any coil coating line that meets the criteria of paragraph (b)(1) or (2) of this section.

(1) A coil coating line that is part of research or laboratory equipment.

(2) A coil coating line on which at least 85 percent of the metal coil coated, based on surface area, is less than 0.15 millimeter (0.006 inch) thick, except as provided in paragraph (c) of this section.

(c) If you operate a coating line subject to subpart JJJJ of this part that also meets the criteria in either paragraph (c)(1) or (2) of this section, and you choose to comply with the requirements of this subpart, then such compliance constitutes compliance with subpart JJJJ. The coating line for which you choose this option is, therefore, included in the affected source for this subpart as defined in § 63.5110 and shall not be included in the affected source for subpart JJJJ as defined in § 63.3300.

(1) The coating line is used to coat metal coil of thicknesses both less than and greater than or equal to 0.15 millimeter (0.006 inch) thick, regardless of the percentage of surface area of each thickness coated.

(2) The coating line is used to coat only metal coil that is less than 0.15 millimeter (0.006 inch) thick and the coating line is controlled by a common control device that also receives organic HAP emissions from a coil coating line that is subject to the requirements of this subpart.

(d) Each coil coating line that does not comply with the provisions of this subpart because it meets the criteria in paragraph (b)(2) of this section, that for any rolling 12-month period fails to meet the criteria in paragraph (b)(2) would from that point forward become subject to the provisions of this subpart. After becoming subject to the provisions of this subpart, the coil coating line would no longer be eligible to use the criteria of paragraph (b)(2) of this section, even if in subsequent 12-month periods at least 85 percent of the metal coil coated, based on surface area, is less than 0.15 millimeter (0.006 inch) thick.

§ 63.5100 Which of my emissions sources are affected by this subpart?

The affected source subject to this subpart is the collection of all of the coil coating lines at your facility.

§ 63.5110 What special definitions are used in this subpart?

All terms used in this subpart that are not defined in this section have the meaning given to them in the Clean Air Act (CAA) and in subpart A of this part.

Always-controlled work station means a work station associated with a curing oven from which the curing oven exhaust is delivered to a control device with no provision for the oven exhaust to bypass the control device. Sampling lines for analyzers and relief valves needed for safety purposes are not considered bypass lines.

Capture efficiency means the fraction of all organic HAP emissions generated by a process that is delivered to a control device, expressed as a percentage.

Capture system means a hood, enclosed room, or other means of collecting organic HAP emissions and conveying them to a control device.

Car-seal means a seal that is placed on a device that is used to change the position of a valve or damper (e.g., from open to closed) in such a way that the position of the valve or damper cannot be changed without breaking the seal.

Coating means material applied onto or impregnated into a substrate for decorative, protective, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealants, inks, adhesives, maskants, and temporary coatings. Decorative, protective, or functional materials that consist only of solvents, protective oils, acids, bases, or any combination of these substances are not considered coatings for the purposes of this subpart.

Coating material means the coating and other products (e.g., a catalyst and resin in multi-component coatings) combined to make a single material at

the coating facility that is applied to metal coil. For the purposes of this subpart, an organic solvent that is used to thin a coating prior to application to the metal coil is considered a coating material.

Coil coating line means a process and the collection of equipment used to apply an organic coating to the surface of metal coil. A coil coating line includes a web unwind or feed section, a series of one or more work stations, any associated curing oven, wet section, and quench station. A coil coating line does not include ancillary operations such as mixing/thinning, cleaning, wastewater treatment, and storage of coating material.

Control device means a device such as a solvent recovery device or oxidizer which reduces the organic HAP in an exhaust gas by recovery or by destruction.

Control device efficiency means the ratio of organic HAP emissions recovered or destroyed by a control device to the total organic HAP emissions that are introduced into the control device, expressed as a percentage.

Curing oven means the device that uses heat or radiation to dry or cure the coating material applied to the metal coil.

Day means a 24-consecutive-hour period.

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 limitation (including any 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 limitation (including any operating limit) or work practice standard in this subpart during start-up, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Existing affected source means an affected source the construction of which commenced on or before July 18, 2000, and it has not subsequently undergone reconstruction as defined in § 63.2.

Facility means all contiguous or adjoining property that is under common ownership or control, including properties that are separated

only by a road or other public right-of-way.

Flexible packaging means any package or part of a package the shape of which can be readily changed. Flexible packaging includes but is not limited to bags, pouches, labels, liners and wraps utilizing paper, plastic, film, aluminum foil, metalized or coated paper or film, or any combination of these materials.

HAP applied means the organic HAP content of all coating materials applied to a substrate by a coil coating line.

Intermittently-controllable work station means a work station associated with a curing oven with provisions for the curing oven exhaust to be delivered to a control device or diverted from a control device through a bypass line, depending on the position of a valve or damper. Sampling lines for analyzers and relief valves needed for safety purposes are not considered bypass lines.

Metal coil means a continuous metal strip that is at least 0.15 millimeter (0.006 inch) thick, which is packaged in a roll or coil prior to coating. After coating, it may or may not be rewound into a roll or coil. Metal coil does not include metal webs that are coated for use in flexible packaging.

Month means a calendar month or a pre-specified period of 28 days to 35 days to allow for flexibility in recordkeeping when data are based on a business accounting period.

Never-controlled work station means a work station which is not equipped with provisions by which any emissions, including those in the exhaust from any associated curing oven, may be delivered to a control device.

New affected source means an affected source the construction or reconstruction of which commenced after July 18, 2000.

Overall organic HAP control efficiency means the total efficiency of a control system, determined either by:

(1) The product of the capture efficiency as determined in accordance with the requirements of § 63.5160(e) and the control device efficiency as determined in accordance with the requirements of § 63.5160(a)(1)(i) and (ii) or § 63.5160(d); or

(2) A liquid-liquid material balance in accordance with the requirements of § 63.5170(e)(1).

Permanent total enclosure (PTE) means a permanently installed enclosure that meets the criteria of Method 204 of appendix M, 40 CFR part 51 for a PTE, and that directs all the exhaust gases from the enclosure to a control device.

Protective oil means an organic material that is applied to metal for the purpose of providing lubrication or protection from corrosion without forming a solid film. This definition of protective oil includes but is not limited to lubricating oils, evaporative oils (including those that evaporate completely), and extrusion oils.

Research or laboratory equipment means any equipment for which the primary purpose is to conduct research and development into new processes and products, where such equipment is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner.

Temporary total enclosure (TTE) means an enclosure constructed for the purpose of measuring the capture efficiency of pollutants emitted from a given source, as defined in Method 204 of 40 CFR part 51, appendix M.

Work station means a unit on a coil coating line where coating material is deposited onto the metal coil substrate.

Emission Standards and Compliance Dates

§ 63.5120 What emission standards must I meet?

(a) Each coil coating affected source must limit organic HAP emissions to the level specified in paragraph (a)(1), (2), or (3) of this section:

(1) No more than 2 percent of the organic HAP applied for each month during each 12-month compliance period (98 percent reduction); or

(2) No more than 0.046 kilogram (kg) of organic HAP per liter of solids applied during each 12-month compliance period; or

(3) If you use an oxidizer to control organic HAP emissions, operate the oxidizer such that an outlet organic HAP concentration of no greater than 20 parts per million by volume (ppmv) on a dry basis is achieved and the efficiency of the capture system is 100 percent.

(b) You must demonstrate compliance with one of these standards by following the applicable procedures in § 63.5170.

§ 63.5121 What operating limits must I meet?

(a) Except as provided in paragraph (b) of this section, for any coil coating line for which you use an add-on control device, unless you use a solvent recovery system and conduct a liquid-liquid material balance according to § 63.5170(e)(1), you must meet the applicable operating limits specified in Table 1 to this subpart. You must establish the operating limits during the

performance test according to the requirements in § 63.5160(d)(3). You must meet the operating limits at all times after you establish them.

(b) If you use an add-on control device other than those listed in Table 1 to this subpart, or wish to monitor an alternative parameter and comply with a different operating limit, you must apply to the Administrator for approval of alternative monitoring under § 63.8(f).

§ 63.5130 When must I comply?

(a) For an existing affected source, the compliance date is 3 years after June 10, 2002.

(b) If you own or operate a new affected source subject to the provisions of this subpart, you must comply immediately upon start-up of the affected source, or by June 10, 2002, whichever is later.

(c) Affected sources which have undergone reconstruction are subject to the requirements for new affected sources.

(d) The initial compliance period begins on the applicable compliance date specified in paragraph (a) or (b) of this section and ends on the last day of the 12th month following the compliance date. If the compliance date falls on any day other than the first day of a month, then the initial compliance period extends through that month plus the next 12 months.

(e) For the purpose of demonstrating continuous compliance, a compliance period consists of 12 months. Each month after the end of the initial compliance period described in paragraph (d) of this section is the end of a compliance period consisting of that month and the preceding 11 months.

General Requirements for Compliance with the Emission Standards and for Monitoring and Performance Tests

§ 63.5140 What general requirements must I meet to comply with the standards?

(a) You must be in compliance with the standards in this subpart at all times, except during periods of start-up, shutdown, and malfunction of any capture system and control device used to comply with this subpart. If you are complying with the emission standards of this subpart without the use of a capture system and control device, you must be in compliance with the standards at all times, including periods of start-up, shutdown, and malfunction.

(b) Table 2 of this subpart provides cross references to subpart A of this part, indicating the applicability of the General Provisions requirements to this subpart.

§ 63.5150 If I use a control device to comply with the emission standards, what monitoring must I do?

TABLE 1 TO § 63.5150.—CONTROL DEVICE MONITORING REQUIREMENTS INDEX

If you operate a coil coating line and have the following:	Then you must:
1. Control device	Monitor control device operating parameters (§ 63.5150(a)(3)).
2. Capture system	Monitor capture system operating parameters (§ 63.5150(a)(4)).
3. Intermittently controllable work station	Monitor parameters related to possible exhaust flow through any bypass to a control device (§ 63.5150(a)(1)).
4. Continuous emission monitors	Operate continuous emission monitors and perform a quarterly audit (§ 63.5150(a)(2)).

(a) To demonstrate continuing compliance with the standards, you must monitor and inspect each capture system and each control device required to comply with § 63.5120 following the date on which the initial performance test of the capture system and control device is completed. You must install and operate the monitoring equipment as specified in paragraphs (a)(1) through (4) of this section.

(1) *Bypass monitoring.* If you operate coil coating lines with intermittently-controllable work stations, you must follow at least one of the procedures in paragraphs (a)(1)(i) through (iv) of this section for each curing oven associated with these work stations to monitor for potential bypass of the control device:

(i) *Flow control position indicator.* Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow control position indicator that provides a record indicating whether the exhaust stream from the curing oven is directed to the control device or is diverted from the control device. The time and flow control position must be recorded at least once per hour, as well as every

time the flow direction is changed. The flow control position indicator must be installed at the entrance to any bypass line that could divert the exhaust stream away from the control device to the atmosphere.

(ii) *Car-seal or lock-and-key valve closures.* Secure any bypass line valve in the closed position with a car-seal or a lock-and-key type configuration when the control device is in operation; a visual inspection of the seal or closure mechanism will be performed at least once every month to ensure that the valve or damper is maintained in the closed position, and the exhaust stream is not diverted through the bypass line.

(iii) *Valve closure continuous monitoring.* Ensure that any bypass line valve or damper is in the closed position through continuous monitoring of valve position when the control device is in operation. The monitoring system must be inspected at least once every month to verify that the monitor will indicate valve position.

(iv) *Automatic shutdown system.* Use an automatic shutdown system in which the coil coating line is stopped when flow is diverted away from the control

device to any bypass line when the control device is in operation. The automatic shutdown system must be inspected at least once every month to verify that it will detect diversions of flow and shut down operations.

(2) *Continuous emission monitoring system (CEMS).* If you are demonstrating continuous compliance with the standards in § 63.5120(a)(1) or (2) through continuous emission monitoring of a control device, you must install, calibrate, operate, and maintain continuous emission monitors to measure the total organic volatile matter concentration at both the control device inlet and outlet, and you must continuously monitor flow rate. If you are demonstrating continuous compliance with the outlet organic HAP concentration limit in § 63.5120(a)(3), you must install, calibrate, operate, and maintain a continuous emission monitor to measure the total organic volatile matter concentration at the control device outlet.

(i) All CEMS must comply with performance specification 8 or 9 of 40 CFR part 60, appendix B, as appropriate for the detection principle you choose.

The requirements of 40 CFR part 60, procedure 1, appendix F must also be followed. In conducting the quarterly audits of the monitors as required by procedure 1, appendix F, you must use compounds representative of the gaseous emission stream being controlled.

(ii) As specified in § 63.8(c)(4)(ii), each CEMS and each flow rate monitor must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. Information which must be determined for recordkeeping purposes, as required by § 63.5190(a)(1)(i) includes:

(A) The hourly average of all recorded readings;

(B) The daily average of all recorded readings for each operating day; and

(C) The monthly average for each month during the semiannual reporting period.

(3) *Temperature monitoring of oxidizers.* If you are complying with the requirements of the standards in § 63.5120 through the use of an oxidizer and demonstrating continuous compliance through monitoring of an oxidizer operating parameter, you must comply with paragraphs (a)(3)(i) through (iii) of this section.

(i) Install, calibrate, maintain, and operate temperature monitoring equipment according to manufacturer's specifications. The calibration of the chart recorder, data logger, or temperature indicator must be verified every 3 months; or the chart recorder, data logger, or temperature indicator

must be replaced. You must replace the equipment either if you choose not to perform the calibration, or if the equipment cannot be calibrated properly. Each temperature monitoring device must be equipped with a continuous recorder. The device must have an accuracy of ±1 percent of the temperature being monitored in degrees Celsius, or ±1° Celsius, whichever is greater.

(ii) For an oxidizer other than a catalytic oxidizer, to demonstrate continuous compliance with the operating limit established according to § 63.5160(d)(3)(i), you must install the thermocouple or temperature sensor in the combustion chamber at a location in the combustion zone.

(iii) For a catalytic oxidizer, if you are demonstrating continuous compliance with the operating limit established according to § 63.5160(d)(3)(ii)(A) and (B), then you must install the thermocouples or temperature sensors in the vent stream at the nearest feasible point to the inlet and outlet of the catalyst bed. Calculate the temperature difference across the catalyst. If you are demonstrating continuous compliance with the operating limit established according to § 63.5160(d)(3)(ii)(C) and (D), then you must install the thermocouple or temperature sensor in the vent stream at the nearest feasible point to the inlet of the catalyst bed.

(4) *Capture system monitoring.* If you are complying with the requirements of the standards in § 63.5120 through the use of a capture system and control

device, you must develop a capture system monitoring plan containing the information specified in paragraphs (a)(4)(i) and (ii) of this section. You must monitor the capture system in accordance with paragraph (a)(4)(iii) of this section. You must make the monitoring plan available for inspection by the permitting authority upon request.

(i) The monitoring plan must identify the operating parameter to be monitored to ensure that the capture efficiency measured during the initial compliance test is maintained, explain why this parameter is appropriate for demonstrating ongoing compliance, and identify the specific monitoring procedures.

(ii) The plan also must specify operating limits at the capture system operating parameter value, or range of values, that demonstrates compliance with the standards in § 63.5120. The operating limits must represent the conditions indicative of proper operation and maintenance of the capture system.

(iii) You must conduct monitoring in accordance with the plan.

(b) Any deviation from the required operating parameters which are monitored in accordance with paragraphs (a)(3) and (4) of this section, unless otherwise excused, will be considered a deviation from the operating limit.

§ 63.5160 What performance tests must I complete?

TABLE 1 TO § 63.5160.—REQUIRED PERFORMANCE TESTING SUMMARY

If you control HAP on your coil coating line by:	You must:
1. Limiting HAP or Volatile matter content of coatings	Determine the HAP or volatile matter and solids content of coating materials according to the procedures in § 63.5160(b) and (c).
2. Using a capture system and add-on control device	Conduct a performance test for each capture and control system to determine: (1) the destruction or removal efficiency of each control device according to § 63.5160(d), and (2) the capture efficiency of each capture system according to § 63.5160(e).

(a) If you use a control device to comply with the requirements of § 63.5120, you are not required to conduct a performance test to demonstrate compliance if one or more of the criteria in paragraphs (a)(1) through (3) of this section are met:

(1) The control device is equipped with continuous emission monitors for determining total organic volatile matter concentration, and capture efficiency has been determined in accordance with the requirements of this subpart; and the continuous emission monitors are used to demonstrate continuous compliance in accordance with § 63.5150(a)(2); or

(2) You have received a waiver of performance testing under § 63.7(h); or

(3) The control device is a solvent recovery system and you choose to comply by means of a monthly liquid-liquid material balance.

(b) *Organic HAP content.* You must determine the organic HAP weight fraction of each coating material applied by following one of the procedures in paragraphs (b)(1) through (4) of this section:

(1) *Method 311.* You may test the material in accordance with Method 311 of appendix A of this part. The Method 311 determination may be performed by

the manufacturer of the material and the results provided to you. The organic HAP content must be calculated according to the criteria and procedures in paragraphs (b)(1)(i) through (iii) of this section.

(i) Count only those organic HAP that are measured to be present at greater than or equal to 0.1 weight percent for Occupational Safety and Health Administration (OSHA)-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and greater than or equal to 1.0 weight percent for other organic HAP compounds.

(ii) Express the weight fraction of each organic HAP you count according to paragraph (b)(1)(i) of this section as a value truncated to four places after the decimal point (for example, 0.3791).

(iii) Calculate the total weight fraction of organic HAP in the tested material by summing the counted individual organic HAP weight fractions and truncating the result to three places after the decimal point (for example, 0.763).

(2) *Method 24.* For coatings, you may determine the total volatile matter content as weight fraction of nonaqueous volatile matter and use it as a substitute for organic HAP, using Method 24 of 40 CFR part 60, appendix A. The Method 24 determination may be performed by the manufacturer of the coating and the results provided to you.

(3) *Alternative method.* You may use an alternative test method for determining the organic HAP weight fraction once the Administrator has approved it. You must follow the procedure in § 63.7(f) to submit an alternative test method for approval.

(4) *Formulation data.* You may use formulation data provided that the information represents each organic HAP present at a level equal to or greater than 0.1 percent for OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and equal to or greater than 1.0 percent for other organic HAP compounds in any raw material used, weighted by the mass fraction of each raw material used in the material. Formulation data may be provided to you by the manufacturer of the coating material. In the event of any inconsistency between test data obtained with the test methods specified in paragraphs (b)(1) through (3) of this section and formulation data, the test data will govern.

(c) *Solids content.* You must determine the solids content of each coating material applied. You may determine the volume solids content using ASTM D2697-86 (Reapproved 1998) or ASTM D6093-97 (incorporated by reference, see § 63.14), or an EPA approved alternative method. The ASTM D2697-86 (Reapproved 1998) or ASTM D6093-97 determination may be performed by the manufacturer of the material and the results provided to you. Alternatively, you may rely on formulation data provided by material providers to determine the volume solids.

(d) *Control device destruction or removal efficiency.* If you are using an add-on control device, such as an oxidizer, to comply with the standard in § 63.5120, you must conduct a performance test to establish the destruction or removal efficiency of the

control device or the outlet HAP concentration achieved by the oxidizer, according to the methods and procedures in paragraphs (d)(1) and (2) of this section. During the performance test, you must establish the operating limits required by § 63.5121 according to paragraph (d)(3) of this section.

(1) An initial performance test to establish the destruction or removal efficiency of the control device must be conducted such that control device inlet and outlet testing is conducted simultaneously. To establish the outlet organic HAP concentration achieved by the oxidizer, only oxidizer outlet testing must be conducted. The data must be reduced in accordance with the test methods and procedures in paragraphs (d)(1)(i) through (ix).

(i) Method 1 or 1A of 40 CFR part 60, appendix A, is used for sample and velocity traverses to determine sampling locations.

(ii) Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A, is used to determine gas volumetric flow rate.

(iii) Method 3, 3A, or 3B of 40 CFR part 60, appendix A, used for gas analysis to determine dry molecular weight. You may also use as an alternative to Method 3B, the manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas, ANSI/ASME PTC 19.10-1981, "Flue and Exhaust Gas Analyses" (incorporated by reference, see § 63.14).

(iv) Method 4 of 40 CFR part 60, appendix A, is used to determine stack gas moisture.

(v) Methods for determining gas volumetric flow rate, dry molecular weight, and stack gas moisture must be performed, as applicable, during each test run, as specified in paragraph (d)(1)(vii) of this section.

(vi) Method 25 or 25A of 40 CFR part 60, appendix A, is used to determine total gaseous non-methane organic matter concentration. Use the same test method for both the inlet and outlet measurements, which must be conducted simultaneously. You must submit notification of the intended test method to the Administrator for approval along with notification of the performance test required under § 63.7 (b). You must use Method 25A if any of the conditions described in paragraphs (d)(1)(vi)(A) through (D) of this section apply to the control device.

(A) The control device is not an oxidizer.

(B) The control device is an oxidizer, but an exhaust gas volatile organic matter concentration of 50 ppmv or less is required to comply with the standards in § 63.5120; or

(C) The control device is an oxidizer, but the volatile organic matter concentration at the inlet to the control system and the required level of control are such that they result in exhaust gas volatile organic matter concentrations of 50 ppmv or less; or

(D) The control device is an oxidizer, but because of the high efficiency of the control device, the anticipated volatile organic matter concentration at the control device exhaust is 50 ppmv or less, regardless of inlet concentration.

(vii) Each performance test must consist of three separate runs, except as provided by § 63.7(e)(3); each run must be conducted for at least 1 hour under the conditions that exist when the affected source is operating under normal operating conditions. For the purpose of determining volatile organic matter concentrations and mass flow rates, the average of the results of all runs will apply. If you are demonstrating initial compliance with the outlet organic HAP concentration limit in § 63.5120(a)(3), only the average outlet volatile organic matter concentration must be determined.

(viii) If you are determining the control device destruction or removal efficiency, for each run, determine the volatile organic matter mass flow rates using Equation 1 of this section:

$$M_f = Q_{sd} C_c (12)(0.0416)(10^{-6}) \quad (\text{Eq. 1})$$

Where:

M_f =total organic volatile matter mass flow rate, kg/per hour (h).

C_c =concentration of organic compounds as carbon in the vent gas, as determined by Method 25 or Method 25A, ppmv, dry basis.

Q_{sd} =volumetric flow rate of gases entering or exiting the control device, as determined by Method 2, 2A, 2C, 2D, 2F, or 2G, dry standard cubic meters (dscm)/h.

0.0416=conversion factor for molar volume, kg-moles per cubic meter (mol/m^3) (@ 293 Kelvin (K) and 760 millimeters of mercury (mmHg)).

(ix) For each run, determine the control device destruction or removal efficiency, DRE, using Equation 2 of this section:

$$\text{DRE} = \frac{M_{fi} - M_{fo}}{M_{fi}} \times 100 \quad (\text{Eq. 2})$$

Where:

DRE=organic emissions destruction or removal efficiency of the add-on control device, percent.

M_{fi} =organic volatile matter mass flow rate at the inlet to the control device, kg/h.

M_{fo} =organic volatile matter mass flow rate at the outlet of the control device, kg/h.

(x) The control device destruction or removal efficiency is determined as the

average of the efficiencies determined in the three test runs and calculated in Equation 2 of this section.

(2) You must record such process information as may be necessary to determine the conditions in existence at the time of the performance test.

Operations during periods of start-up, shutdown, and malfunction will not constitute representative conditions for the purpose of a performance test.

(3) Operating limits. If you are using a capture system and add-on control device other than a solvent recovery system for which you conduct a liquid-liquid material balance to comply with the requirements in § 63.5120, you must establish the applicable operating limits required by § 63.5121. These operating limits apply to each capture system and to each add-on emission control device that is not monitored by CEMS, and you must establish the operating limits during the performance test required by paragraph (d) of this section according to the requirements in paragraphs (d)(3)(i) through (iii) of this section.

(i) *Thermal oxidizer.* If your add-on control device is a thermal oxidizer, establish the operating limits according to paragraphs (d)(3)(i)(A) and (B) of this section.

(A) During the performance test, you must monitor and record the combustion temperature at least once every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

(B) Use the data collected during the performance test to calculate and record the average combustion temperature maintained during the performance test. This average combustion temperature is the minimum operating limit for your thermal oxidizer.

(ii) *Catalytic oxidizer.* If your add-on control device is a catalytic oxidizer, establish the operating limits according to either paragraphs (d)(3)(ii)(A) and (B) or paragraphs (d)(3)(ii)(C) and (D) of this section.

(A) During the performance test, you must monitor and record the temperature just before the catalyst bed and the temperature difference across the catalyst bed at least once every 15 minutes during each of the three test runs.

(B) Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed and the average

temperature difference across the catalyst bed maintained during the performance test. These are the minimum operating limits for your catalytic oxidizer.

(C) As an alternative to monitoring the temperature difference across the catalyst bed, you may monitor the temperature at the inlet to the catalyst bed and implement a site-specific inspection and maintenance plan for your catalytic oxidizer as specified in paragraph (d)(3)(ii)(D) of this section. During the performance test, you must monitor and record the temperature just before the catalyst bed at least once every 15 minutes during each of the three test runs. Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed during the performance test. This is the minimum operating limit for your catalytic oxidizer.

(D) You must develop and implement an inspection and maintenance plan for your catalytic oxidizer(s) for which you elect to monitor according to paragraph (d)(3)(ii)(C) of this section. The plan must address, at a minimum, the elements specified in paragraphs (d)(3)(ii)(D)(1) (3) of this section.

(1) Annual sampling and analysis of the catalyst activity (*i.e.*, conversion efficiency) following the manufacturer's or catalyst supplier's recommended procedures.

(2) Monthly inspection of the oxidizer system including the burner assembly and fuel supply lines for problems and,

(3) Annual internal and monthly external visual inspection of the catalyst bed to check for channeling, abrasion, and settling. If problems are found, you must take corrective action consistent with the manufacturer's recommendations and conduct a new performance test to determine destruction efficiency according to § 63.5160.

(iii) *Other types of control devices.* If you use a control device other than an oxidizer or a solvent recovery system for which you choose to comply by means of a monthly liquid-liquid material balance, or wish to monitor an alternative parameter and comply with a different operating limit, you must apply to the Administrator for approval of alternative monitoring under § 63.8(f).

(e) *Capture efficiency.* If you are required to determine capture efficiency to meet the requirements of § 63.5170(e)(2), (f)(1) through (2), (h)(2) through (4), or (i)(2) through (3), you

must determine capture efficiency using the procedures in paragraph (e)(1), (2), or (3) of this section, as applicable.

(1) For an enclosure that meets the criteria for a PTE, you may assume it achieves 100 percent capture efficiency. You must confirm that your capture system is a PTE by demonstrating that it meets the requirements of section 6 of EPA Method 204 of 40 CFR part 51, appendix M (or an EPA approved alternative method), and that all exhaust gases from the enclosure are delivered to a control device.

(2) You may determine capture efficiency, CE, according to the protocols for testing with temporary total enclosures that are specified in Method 204A through F of 40 CFR part 51, appendix M. You may exclude never-controlled work stations from such capture efficiency determinations.

(3) As an alternative to the procedures specified in paragraphs (e)(1) and (2) of this section, if you are required to conduct a capture efficiency test, you may use any capture efficiency protocol and test methods that satisfy the criteria of either the Data Quality Objective or the Lower Confidence Limit approach as described in appendix A to subpart KK of this part. You may exclude never-controlled work stations from such capture efficiency determinations.

Requirements for Showing Compliance

§ 63.5170 How do I demonstrate compliance with the standards?

You must include all coating materials (as defined in § 63.5110) used in the affected source when determining compliance with the applicable emission limit in § 63.5120. To make this determination, you must use at least one of the four compliance options listed in Table 1 of this section. You may apply any of the compliance options to an individual coil coating line, or to multiple lines as a group, or to the entire affected source. You may use different compliance options for different coil coating lines, or at different times on the same line. However, you may not use different compliance options at the same time on the same coil coating line. If you switch between compliance options for any coil coating line or group of lines, you must document this switch as required by § 63.5190(a), and you must report it in the next semiannual compliance report required in § 63.5180.

TABLE 1 TO § 63.5170.—COMPLIANCE DEMONSTRATION REQUIREMENTS INDEX

If you choose to demonstrate compliance by:	Then you must demonstrate that:
1. Use of “as purchased” compliant coatings	a. Each coating material used during the 12-month compliance period does not exceed 0.046 kg HAP per liter solids, as purchased. Paragraph (a) of this section.
2. Use of “as applied” compliant coatings	a. Each coating material used does not exceed 0.046 kg HAP per liter solids on a rolling 12-month average as applied basis, determined monthly. Paragraphs (b)(1) of this section; or
	b. Average of all coating materials used does not exceed 0.046 kg HAP per liter solids on a rolling 12-month average as applied basis, determined monthly. Paragraph (b)(2) of this section.
3. Use of a capture system and control device ..	Overall organic HAP control efficiency is at least 98 percent on a monthly basis for individual or groups of coil coating lines; or overall organic HAP control efficiency is at least 98 percent during initial performance test and operating limits are achieved continuously for individual coil coating lines; or oxidizer outlet HAP concentration is no greater than 20 ppmv and there is 100 percent capture efficiency during initial performance test and operating limits are achieved continuously for individual coil coating lines. Paragraph (c) of this section.
	Average equivalent emission rate does not exceed 0.046 kg HAP per liter solids on a rolling 12-month average as applied basis, determined monthly. Paragraph (d) of this section.
4. Use of a combination of compliant coatings and control devices and maintaining an acceptable equivalent emission rate.	

(a) *As-purchased compliant coatings.* If you elect to use coatings that individually meet the organic HAP emission limit in § 63.5120(a)(2) as-purchased, to which you will not add HAP during distribution or application, you must demonstrate that each coating material applied during the 12-month compliance period contains no more than 0.046 kg HAP per liter of solids on an as-purchased basis.

(1) Determine the organic HAP content for each coating material in accordance with § 63.5160(b) and the volume solids content in accordance with § 63.5160(c).

(2) Combine these results using Equation 1 of this section and compare the result to the organic HAP emission

limit in § 63.5120(a)(2) to demonstrate that each coating material contains no more organic HAP than the limit.

$$H_{siap} = \frac{C_{hi} D_i}{V_{si}} \quad (\text{Eq. 1})$$

Where:

H_{siap} = as-purchased, organic HAP to solids ratio of coating material, i, kg organic HAP/liter solids applied.

C_{hi} = organic HAP content of coating material, i, expressed as a weight-fraction, kg/kg.

D_i = density of coating material, i, kg/l.

V_{si} = volume fraction of solids in coating, i, l/l.

(b) *As-applied compliant coatings.* If you choose to use “as-applied” compliant coatings, you must

demonstrate that the average of each coating material applied during the 12-month compliance period contains no more than 0.046 kg of organic HAP per liter of solids applied in accordance with (b)(1) of this section, or demonstrate that the average of all coating materials applied during the 12-month compliance period contain no more than 0.046 kg of organic HAP per liter of solids applied in accordance with paragraph (b)(2) of this section.

(1) To demonstrate that the average organic HAP content on the basis of solids applied for each coating material applied, $H_{si\ yr}$, is less than 0.046 kg HAP per liter solids applied for the 12-month compliance period, use Equation 2 of this section:

$$H_{si\ yr} = \frac{\sum_{y=1}^{12} \left[V_i D_i C_{ahi} + \sum_{i=1}^q V_j D_j C_{hij} \right]}{\sum_{y=1}^{12} V_i V_{si}} \quad (\text{Eq. 2})$$

Where:

$H_{si\ yr}$ = average for the 12-month compliance period, as-applied, organic HAP to solids ratio of material, i, kg organic HAP/liter solids applied.

V_i = volume of coating material, i, l.

D_i = density of coating material, i, kg/l.

C_{ahi} = monthly average, as-applied, organic HAP content of solids-containing coating material, i, expressed as a weight fraction, kilogram (kg)/kg.

V_j = volume of solvent, j, l.

D_j = density of solvent, j, kg/l.

C_{hij} = organic HAP content of solvent, j, added to coating material, i, expressed as a weight fraction, kg/kg.

V_{si} = volume fraction of solids in coating, i, l/l.

y = identifier for months.

q = number of different solvents, thinners, reducers, diluents, or other non-solids-

containing coating materials applied in a month.

(2) To demonstrate that the average organic HAP content on the basis of solids applied, $H_{S\ yr}$, of all coating materials applied is less than 0.046 kg HAP per liter solids applied for the 12-month compliance period, use Equation 3 of this section:

$$H_{S\ yr} = \frac{\sum_{y=1}^{12} \left[\sum_{i=1}^p V_i D_i C_{ahi} + \sum_{j=1}^q V_j D_j C_{hij} \right]}{\sum_{y=1}^{12} \left[\sum_{i=1}^p V_i V_{si} \right]} \quad (\text{Eq. 3})$$

Where:

$H_{S\ yr}$ = average for the 12-month compliance period, as-applied, organic HAP to solids ratio of all materials applied, kg organic HAP/liter solids applied.

V_i = volume of coating material, i, l.

D_i = density of coating material, i, kg/l.

C_{ahi} = monthly average, as-applied, organic HAP content of solids-containing coating material, i, expressed as a weight fraction, kilogram (kg)/kg.

V_j = volume of solvent, j, l.

D_j = density of solvent, j, kg/l.

C_{hij} = organic HAP content of solvent, j, added to coating material, i, expressed as a weight fraction, kg/kg.

V_{si} = volume fraction of solids in coating, i, l/l.

p = number of different coating materials applied in a month.

q = number of different solvents, thinners, reducers, diluents, or other non-solids-containing coating materials applied in a month.

y = identifier for months.

(c) *Capture and control to reduce emissions to no more than the allowable limit.* If you use one or more capture systems and one or more control devices and demonstrate an average overall organic HAP control efficiency of at least 98 percent for each month to comply with § 63.5120(a)(1); or operate a capture system and oxidizer so that the capture efficiency is 100 percent and the oxidizer outlet HAP concentration is no greater than 20 ppmv on a dry basis to comply with § 63.5120(a)(3), you must follow one of the procedures in paragraphs (c)(1) through (4) of this section. Alternatively, you may demonstrate compliance for an individual coil coating line by operating its capture system and control device and continuous parameter monitoring system according to the procedures in paragraph (i) of this section.

(1) If the affected source uses one compliance procedure to limit organic HAP emissions to the level specified in § 63.5120(a)(1) or (2) and has only always-controlled work stations, then you must demonstrate compliance with the provisions of paragraph (e) of this section when emissions from the affected source are controlled by one or more solvent recovery devices.

(2) If the affected source uses one compliance procedure to limit organic HAP emissions to the level specified in § 63.5120(a)(1) or (2) and has only always-controlled work stations, then you must demonstrate compliance with the provisions of paragraph (f) of this section when emissions are controlled by one or more oxidizers.

(3) If the affected source operates both solvent recovery and oxidizer control devices, one or more never-controlled work stations, or one or more intermittently-controllable work

stations, or uses more than one compliance procedure, then you must demonstrate compliance with the provisions of paragraph (g) of this section.

(4) The method of limiting organic HAP emissions to the level specified in § 63.5120(a)(3) is the installation and operation of a PTE around each work station and associated curing oven in the coating line and the ventilation of all organic HAP emissions from each PTE to an oxidizer with an outlet organic HAP concentration of no greater than 20 ppmv on a dry basis. An enclosure that meets the requirements in § 63.5160(e)(1) is considered a PTE. Initial compliance of the oxidizer with the outlet organic HAP concentration limit is demonstrated either through continuous emission monitoring according to paragraph (c)(4)(ii) of this section or through performance tests using the procedure in § 63.5160(d). If this method is selected, you must meet the requirements of paragraph (c)(4)(i) of this section to demonstrate capturing achievement of 100 percent capture of organic HAP emissions and either paragraph (c)(4)(ii) or paragraph (c)(4)(iii) of this section, respectively, to demonstrate continuous compliance with the oxidizer outlet organic HAP concentration limit through continuous emission monitoring or continuous operating parameter monitoring:

(i) Whenever a work station is operated, continuously monitor the capture system operating parameter established in accordance with § 63.5150(a)(4).

(ii) To demonstrate that the value of the exhaust gas organic HAP concentration at the outlet of the oxidizer is no greater than 20 ppmv, on a dry basis, install, calibrate, operate, and maintain CEMS according to the requirements of § 63.5150(a)(2).

(iii) To demonstrate continuous compliance with operating limits established in accordance with § 63.5150(a)(3), whenever a work station is operated, continuously monitor the applicable oxidizer operating parameter.

(d) *Capture and control to achieve the emission rate limit.* If you use one or more capture systems and one or more control devices and limit the organic HAP emission rate to no more than 0.046 kg organic HAP emitted per liter of solids applied on a 12-month average as-applied basis, then you must follow one of the procedures in paragraphs (d)(1) through (3) of this section.

(1) If you use one or more solvent recovery devices, you must demonstrate compliance with the provisions in paragraph (e) of this section.

(2) If you use one or more oxidizers, you must demonstrate compliance with the provisions in paragraph (f) of this section.

(3) If you use both solvent recovery devices and oxidizers, or operate one or more never-controlled work stations or one or more intermittently controllable work stations, you must demonstrate compliance with the provisions in paragraph (g) of this section.

(e) *Use of solvent recovery to demonstrate compliance.* If you use one or more solvent recovery devices to control emissions from always-controlled work stations, you must show compliance by following the procedures in either paragraph (e)(1) or (2) of this section:

(1) *Liquid-liquid material balance.* Perform a liquid-liquid material balance for each month as specified in paragraphs (e)(1)(i) through (vi) of this section and use Equations 4 through 6 of this section to convert the data to units of this standard. All determinations of quantity of coating and composition of coating must be made at a time and location in the process after all ingredients (including any dilution solvent) have been added to the coating, or appropriate adjustments must be made to account for any ingredients added after the amount of coating has been determined.

(i) Measure the mass of each coating material applied on the work station or group of work stations controlled by one or more solvent recovery devices during the month.

(ii) If demonstrating compliance with the organic HAP emission rate based on solids applied, determine the organic HAP content of each coating material applied during the month following the procedure in § 63.5160(b).

(iii) Determine the volatile matter content of each coating material applied during the month following the procedure in § 63.5160(c).

(iv) If demonstrating compliance with the organic HAP emission rate based on solids applied, determine the solids content of each coating material applied during the month following the procedure in § 63.5160(c).

(v) For each solvent recovery device used to comply with § 63.5120(a), install, calibrate, maintain, and operate according to the manufacturer's specifications, a device that indicates the cumulative amount of volatile matter recovered by the solvent recovery device on a monthly basis. The device must be initially certified by the manufacturer to be accurate to within ± 2.0 percent.

(vi) For each solvent recovery device used to comply with § 63.5120(a),

measure the amount of volatile matter recovered for the month.

(vii) *Recovery efficiency, R_v*. Calculate the volatile organic matter collection and recovery efficiency, R_v, using Equation 4 of this section:

$$R_v = 100 \frac{\sum_{k=1}^s M_{kvr}}{\sum_{i=1}^p M_i C_{vi} + \sum_{j=1}^q M_j} \quad (\text{Eq. 4})$$

Where:

R_v = organic volatile matter collection and recovery efficiency, percent.

M_{kvr} = mass of volatile matter recovered in a month by solvent recovery device, k, kg.

M_i = mass of coating material, i, applied in a month, kg.

C_{vi} = volatile matter content of coating material, i, expressed as a weight fraction, kg/kg.

M_j = mass of solvent, thinner, reducer, diluent, or other non-solids-containing coating material (excluding H₂O), j, applied in a month, kg.

p = number of different coating materials applied in a month.

q = number of different solvents, thinners, reducers, diluents, or other non-solids-containing coating materials applied in a month.

s = number of solvent recovery devices used to comply with the standard of § 63.5120 of this part, in the facility.

(viii) *Organic HAP emitted, H_e*.

Calculate the mass of organic HAP emitted during the month, H_e, using Equation 5 of this section:

$$H_e = \left[1 - \frac{R_v}{100} \right] \left[\sum_{i=1}^p C_{hi} M_i + \sum_{j=1}^q C_{hij} M_{ij} \right] \quad (\text{Eq. 5})$$

Where:

H_e = total monthly organic HAP emitted, kg.

R_v = organic volatile matter collection and recovery efficiency, percent.

C_{hi} = organic HAP content of coating material, i, expressed as a weight-fraction, kg/kg.

M_i = mass of coating material, i, applied in a month, kg.

C_{hij} = organic HAP content of solvent, j, added to coating material, i, expressed as a weight fraction, kg/kg.

M_{ij} = mass of solvent, thinner, reducer, diluent, or other non-solids-containing coating material, j, added to solids-containing coating material, i, in a month, kg.

p = number of different coating materials applied in a month.

q = number of different solvents, thinners, reducers, diluents, or other non-solids-containing coating materials applied in a month.

(ix) *Organic HAP emission rate based on solids applied for the 12-month compliance period, L_{ANNUAL}*. Calculate the organic HAP emission rate based on solids applied for the 12-month compliance period, L_{ANNUAL}, using Equation 6 of this section:

$$L_{\text{ANNUAL}} = \frac{\sum_{y=1}^{12} H_e}{\sum_{y=1}^{12} \left[\sum_{i=1}^p C_{si} M_i \right]} \quad (\text{Eq. 6})$$

Where:

L_{ANNUAL} = mass organic HAP emitted per volume of solids applied for the 12-month compliance period, kg/liter.

H_e = total monthly organic HAP emitted, kg.

C_{si} = solids content of coating material, i, expressed as liter of solids/kg of material.

M_i = mass of coating material, i, applied in a month, kg.

y = identifier for months.

p = number of different coating materials applied in a month.

(x) *Compare actual performance to performance required by compliance option*. The affected source is in compliance with § 63.5120(a) if it meets the requirement in either paragraph (e)(1)(x)(A) or (B) of this section:

(A) The average volatile organic matter collection and recovery efficiency, R_v, is 98 percent or greater each month of the 12-month compliance period; or

(B) The organic HAP emission rate based on solids applied for the 12-month compliance period, L_{ANNUAL}, is 0.046 kg organic HAP per liter solids applied or less.

(2) *Continuous emission monitoring of control device performance*. Use continuous emission monitors to demonstrate recovery efficiency, conduct an initial performance test of capture efficiency and volumetric flow rate, and continuously monitor a site

specific operating parameter to ensure that capture efficiency and volumetric flow rate are maintained following the procedures in paragraphs (e)(2)(i) through (xi) of this section:

(i) *Control device destruction or removal efficiency, DRE*. For each control device used to comply with § 63.5120(a), continuously monitor the gas stream entering and exiting the control device to determine the total volatile organic matter mass flow rate (e.g., by determining the concentration of the vent gas in grams per cubic meter and the volumetric flow rate in cubic meters per second, such that the total volatile organic matter mass flow rate in grams per second can be calculated using Equation 1 of § 63.5160, and the percent destruction or removal efficiency, DRE, of the control device can be calculated for each month using Equation 2 of § 63.5160.

(ii) Determine the percent capture efficiency, CE, for each work station in accordance with § 63.5160(e).

(iii) *Capture efficiency monitoring*. Whenever a work station is operated, continuously monitor the operating parameter established in accordance with § 63.5150(a)(4).

(iv) *Control efficiency, R*. Calculate the overall organic HAP control efficiency, R, achieved for each month using Equation 7 of this section:

$$R = 100 \frac{\sum_{A=1}^w \left[(\text{DRE}_K \text{CE}_A) \left(\sum_{i=1}^p M_{Ai} C_{vi} + \sum_{j=1}^q M_{Aj} \right) \right]}{\sum_{i=1}^p M_i C_{vi} + \sum_{j=1}^q M_j} \quad (\text{Eq. 7})$$

Where:

R=overall organic HAP control efficiency, percent.

DRE_k=organic volatile matter destruction or removal efficiency of control device, k, percent.

CE_A=organic volatile matter capture efficiency of the capture system for work station, A, percent.

M_{Ai}=mass of coating material, i, applied on work station, A, in a month, kg.

C_{vi}=volatile matter content of coating material, i, expressed as a weight fraction, kg/kg.

M_{Aj}=mass of solvent, thinner, reducer, diluent, or other non-solids-containing coating material (including H₂O), j, applied on work station, A, in a month, kg.

M_i=mass of coating material, i, applied in a month, kg.

M_j=mass of solvent, thinner, reducer, diluent, or other non-solids-containing coating material (excluding H₂O), j, applied in a month, kg.

w=number of always-controlled work stations in the facility.

p=number of different coating materials applied in a month.

q=number of different solvents, thinners, reducers, diluents, or other non-solids-containing coating materials applied in a month.

(v) If demonstrating compliance with the organic HAP emission rate based on solids applied, measure the mass of each coating material applied on each work station during the month.

(vi) If demonstrating compliance with the organic HAP emission rate based on solids applied, determine the organic HAP content of each coating material applied during the month in accordance with § 63.5160(b).

(vii) If demonstrating compliance with the organic HAP emission rate based on solids applied, determine the solids content of each coating material applied during the month in accordance with § 63.5160(c).

(viii) If demonstrating compliance with the organic HAP emission rate based on solids applied, calculate the organic HAP emitted during the month, H_e, for each month using Equation 8 of this section:

$$H_e = \sum_{A=1}^w \left[1 - (DRE_K CE_A) \left(\sum_{i=1}^p C_{hi} M_{Ai} + \sum_{j=1}^q C_{hij} M_{Aij} \right) \right] \quad (\text{Eq. 8})$$

Where:

H_e=total monthly organic HAP emitted, kg.

DRE_k=organic volatile matter destruction or removal efficiency of control device, k, percent.

CE_A=organic volatile matter capture efficiency of the capture system for work station, A, percent.

C_{hi}=organic HAP content of coating material, i, expressed as a weight-fraction, kg/kg.

M_{Ai}=mass of coating material, i, applied on work station, A, in a month, kg.

C_{hij}=organic HAP content of solvent, j, added to coating material, i, expressed as a weight fraction, kg/kg.

M_{Aij}=mass of solvent, thinner, reducer, diluent, or other non-solids-containing coating material, j, added to solids-containing coating material, i, applied on work station, A, in a month, kg.

w=number of always-controlled work stations in the facility.

p=number of different coating materials applied in a month.

q=number of different solvents, thinners, reducers, diluents, or other non-solids-containing coating materials applied in a month.

(ix) *Organic HAP emission rate based on solids applied for the 12-month compliance period, L_{ANNUAL}.* Calculate the organic HAP emission rate based on solids applied for the 12-month compliance period, L_{ANNUAL}, using Equation 6 of this section.

(x) *Compare actual performance to performance required by compliance option.* The affected source is in compliance with § 63.5120(a) if each capture system operating parameter is operated at an average value greater than or less than (as appropriate) the operating parameter value established in accordance with § 63.5150 for each 3-hour period; and

(A) The overall organic HAP control efficiency, R, is 98 percent or greater for each; or

(B) The organic HAP emission rate based on solids applied for the 12-month compliance period, L_{ANNUAL}, is 0.046 kg organic HAP per liter solids applied or less.

(f) *Use of oxidation to demonstrate compliance.* If you use one or more oxidizers to control emissions from always controlled work stations, you must follow the procedures in either paragraph (f)(1) or (2) of this section:

(1) *Continuous monitoring of capture system and control device operating parameters.* Demonstrate initial compliance through performance tests of capture efficiency and control device efficiency and continuing compliance through continuous monitoring of capture system and control device operating parameters as specified in paragraphs (f)(1)(i) through (xi) of this section:

(i) For each oxidizer used to comply with § 63.5120(a), determine the oxidizer destruction or removal efficiency, DRE, using the procedure in § 63.5160(d).

(ii) Whenever a work station is operated, continuously monitor the operating parameter established in accordance with § 63.5150(a)(3).

(iii) Determine the capture system capture efficiency, CE, for each work station in accordance with § 63.5160(e).

(iv) Whenever a work station is operated, continuously monitor the operating parameter established in accordance with § 63.5150(a)(4).

(v) Calculate the overall organic HAP control efficiency, R, achieved using Equation 7 of this section.

(vi) If demonstrating compliance with the organic HAP emission rate based on solids applied, measure the mass of each coating material applied on each work station during the month.

(vii) If demonstrating compliance with the organic HAP emission rate based on solids applied, determine the organic HAP content of each coating material applied during the month following the procedure in § 63.5160(b).

(viii) If demonstrating compliance with the organic HAP emission rate based on solids applied, determine the solids content of each coating material applied during the month following the procedure in § 63.5160(c).

(ix) Calculate the organic HAP emitted during the month, H_e, for each month:

(A) For each work station and its associated oxidizer, use Equation 8 of this section.

(B) For periods when the oxidizer has not operated within its established operating limit, the control device efficiency is determined to be zero.

(x) *Organic HAP emission rate based on solids applied for the 12-month compliance period, L_{ANNUAL}.* If demonstrating compliance with the organic HAP emission rate based on solids applied for the 12-month compliance period, calculate the organic HAP emission rate based on solids applied, L_{ANNUAL}, for the 12-month compliance period using Equation 6 of this section.

(xi) *Compare actual performance to performance required by compliance*

option. The affected source is in compliance with § 63.5120(a) if each oxidizer is operated such that the average operating parameter value is greater than the operating parameter value established in § 63.5150(a)(3) for each 3-hour period, and each capture system operating parameter average value is greater than or less than (as appropriate) the operating parameter value established in § 63.5150(a)(4) for each 3-hour period; and the requirement in either paragraph (f)(1)(xi)(A) or (B) of this section is met.

(A) The overall organic HAP control efficiency, R, is 98 percent or greater for each; or

(B) The organic HAP emission rate based on solids applied, L_{ANNUAL} , is 0.046 kg organic HAP per liter solids applied or less for the 12-month compliance period.

(2) *Continuous emission monitoring of control device performance.* Use continuous emission monitors, conduct an initial performance test of capture efficiency, and continuously monitor a site specific operating parameter to ensure that capture efficiency is maintained. Compliance must be demonstrated in accordance with paragraph (e)(2) of this section.

(g) *Combination of capture and control.* You must demonstrate compliance according to the procedures in paragraphs (g)(1) through (8) of this section if both solvent recovery and oxidizer control devices, one or more never controlled coil coating stations, or one or more intermittently controllable coil coating stations are operated; or more than one compliance procedure is used.

(1) *Solvent recovery system using liquid/liquid material balance compliance demonstration.* For each solvent recovery system used to control one or more work stations for which you choose to comply by means of a liquid-liquid material balance, you must determine the organic HAP emissions each month of the 12-month compliance period for those work stations controlled by that solvent recovery system according to either paragraph (g)(1)(i) or (ii) of this section:

(i) In accordance with paragraphs (e)(1)(i) through (iii) and (e)(1)(v) through (viii) of this section if the work stations controlled by that solvent recovery system are only always-controlled work stations; or

(ii) In accordance with paragraphs (e)(1)(ii) through (iii), (e)(1)(v) through (vi), and (h) of this section if the work stations controlled by that solvent recovery system include one or more

never-controlled or intermittently-controllable work stations.

(2) *Solvent recovery system using performance test and continuous monitoring compliance demonstration.* For each solvent recovery system used to control one or more coil coating stations for which you choose to comply by means of an initial test of capture efficiency, continuous emission monitoring of the control device, and continuous monitoring of a capture system operating parameter, each month of the 12-month compliance period you must meet the requirements of paragraphs (g)(2)(i) and (ii) of this section:

(i) For each capture system delivering emissions to that solvent recovery system, monitor an operating parameter established in § 63.5150(a)(4) to ensure that capture system efficiency is maintained; and

(ii) Determine the organic HAP emissions for those work stations served by each capture system delivering emissions to that solvent recovery system according to either paragraph (g)(2)(ii)(A) or (B) of this section:

(A) In accordance with paragraphs (e)(2)(i) through (iii) and (e)(2)(v) through (viii) of this section if the work stations served by that capture system are only always-controlled coil coating stations; or

(B) In accordance with paragraphs (e)(2)(i) through (iii), (e)(2)(v) through (vii), and (h) of this section if the work stations served by that capture system include one or more never-controlled or intermittently-controllable work stations.

(3) *Oxidizer using performance test and continuous monitoring of operating parameters compliance demonstration.* For each oxidizer used to control emissions from one or more work stations for which you choose to demonstrate compliance through performance tests of capture efficiency, control device efficiency, and continuing compliance through continuous monitoring of capture system and control device operating parameters, each month of the 12-month compliance period you must meet the requirements of paragraphs (g)(3)(i) through (iii) of this section:

(i) Monitor an operating parameter established in § 63.5150(a)(3) to ensure that control device destruction or removal efficiency is maintained; and

(ii) For each capture system delivering emissions to that oxidizer, monitor an operating parameter established in § 63.5150(a)(4) to ensure capture efficiency; and

(iii) Determine the organic HAP emissions for those work stations served by each capture system delivering emissions to that oxidizer according to either paragraph (g)(3)(iii)(A) or (B) of this section:

(A) In accordance with paragraphs (f)(1)(i) through (v) and (ix) of this section if the work stations served by that capture system are only always-controlled work stations; or

(B) In accordance with paragraphs (f)(1)(i) through (v), (ix), and (h) of this section if the work stations served by that capture system include one or more never-controlled or intermittently-controllable work stations.

(4) *Oxidizer using continuous emission monitoring compliance demonstration.* For each oxidizer used to control emissions from one or more work stations for which you choose to demonstrate compliance through an initial capture efficiency test, continuous emission monitoring of the control device, and continuous monitoring of a capture system operating parameter, each month of the 12-month compliance period you must meet the requirements in paragraphs (g)(4)(i) and (ii) of this section:

(i) For each capture system delivering emissions to that oxidizer, monitor an operating parameter established in § 63.5150(a)(4) to ensure capture efficiency; and

(ii) Determine the organic HAP emissions for those work stations served by each capture system delivering emissions to that oxidizer according to either paragraph (g)(4)(ii)(A) or (B) of this section:

(A) In accordance with paragraphs (e)(2)(i) through (iii) and (e)(2)(v) through (viii) of this section if the work stations served by that capture system are only always-controlled work stations; or

(B) In accordance with paragraphs (e)(2)(i) through (iii), (e)(2)(v) through (vii), and (h) of this section if the work stations served by that capture system include one or more never-controlled or intermittently-controllable work stations.

(5) *Uncontrolled work stations.* For uncontrolled work stations, each month of the 12-month compliance period you must determine the organic HAP applied on those work stations using Equation 9 of this section. The organic HAP emitted from an uncontrolled work station is equal to the organic HAP applied on that work station:

$$H_m = \sum_{A=1}^x \left(\sum_{i=1}^p C_{hi} M_{Ai} + \sum_{j=1}^q C_{hij} M_{Aij} \right) \quad (\text{Eq. 9})$$

Where:

H_m =facility total monthly organic HAP applied on uncontrolled coil coating stations, kg.

C_{hi} =organic HAP content of coating material, i, expressed as a weight-fraction, kg/kg.

M_{Ai} =mass of coating material, i, applied on work station, A, in a month, kg.

C_{hij} =organic HAP content of solvent, j, added to coating material, i, expressed as a weight fraction, kg/kg.

M_{Aij} =mass of solvent, thinner, reducer, diluent, or other non-solids-containing coating material, j, added to solids-containing coating material, i, applied on work station, A, in a month, kg.

x=number of uncontrolled work stations in the facility.

p=number of different coating materials applied in a month.

q=number of different solvents, thinners, reducers, diluents, or other non-solids-containing coating materials applied in a month.

(6) If demonstrating compliance with the organic HAP emission rate based on solids applied, each month of the 12-month compliance period you must determine the solids content of each coating material applied during the month following the procedure in § 63.5160(c).

(7) *Organic HAP emitted.* You must determine the organic HAP emissions for the affected source for each 12-month compliance period by summing all monthly organic HAP emissions calculated according to paragraphs (g)(1), (g)(2)(ii), (g)(3)(iii), (g)(4)(ii), and (g)(5) of this section.

(8) *Compare actual performance to performance required by compliance option.* The affected source is in compliance with § 63.5120(a) for the 12-month compliance period if all

operating parameters required to be monitored under paragraphs (g)(2) through (4) of this section were maintained at the values established in § 63.5150; and it meets the requirement in either paragraph (g)(8)(i) or (ii) of this section.

(i) The total mass of organic HAP emitted by the affected source was not more than 0.046 kg HAP per liter of solids applied for the 12-month compliance period; or

(ii) The total mass of organic HAP emitted by the affected source was not more than 2 percent of the total mass of organic HAP applied by the affected source each month. You must determine the total mass of organic HAP applied by the affected source in each month of the 12-month compliance period using Equation 9 of this section.

(h) *Organic HAP emissions from intermittently-controllable or never-controlled coil coating stations.* If you have been expressly referenced to this paragraph by paragraphs (g)(1)(ii), (g)(2)(ii)(B), (g)(3)(iii)(B), or (g)(4)(ii)(B) of this section for calculation procedures to determine organic HAP emissions, you must for your intermittently-controllable or never-controlled work stations meet the requirements of paragraphs (h)(1) through (6) of this section:

(1) Determine the sum of the mass of all solids-containing coating materials which are applied on intermittently-controllable work stations in bypass mode, and the mass of all solids-containing coating materials which are applied on never-controlled coil coating stations during each month of the 12-month compliance period, M_{Bi} .

(2) Determine the sum of the mass of all solvents, thinners, reducers, diluents, and other nonsolids-containing coating materials which are applied on intermittently-controllable work stations in bypass mode, and the mass of all solvents, thinners, reducers, diluents and other nonsolids-containing coating materials which are applied on never-controlled work stations during each month of the 12-month compliance period, M_{Bj} .

(3) Determine the sum of the mass of all solids-containing coating materials which are applied on intermittently-controllable work stations in controlled mode, and the mass of all solids-containing coating materials which are applied on always-controlled work stations during each month of the 12-month compliance period, M_{Ci} .

(4) Determine the sum of the mass of all solvents, thinners, reducers, diluents, and other nonsolids-containing coating materials which are applied on intermittently-controllable work stations in controlled mode, and the mass of all solvents, thinners, reducers, diluents, and other nonsolids-containing coating materials which are applied on always-controlled work stations during each month of the 12-month compliance period, M_{Cj} .

(5) *Liquid-liquid material balance calculation of HAP emitted.* For each work station or group of work stations for which you use the provisions of paragraph (g)(1)(ii) of this section, you must calculate the organic HAP emitted during the month using Equation 10 of this section:

$$H_e = \left[\sum_{i=1}^p M_{Ci} C_{hi} + \sum_{j=1}^q M_{Cj} C_{hj} \right] \left[1 - \frac{\sum_{k=1}^s M_{kvr}}{\sum_{i=1}^p M_{Ci} C_{vi} + \sum_{j=1}^q M_{Cj}} \right] + \left[\sum_{i=1}^p M_{Bi} C_{hi} + \sum_{j=1}^q M_{Bj} C_{hj} \right] \quad (\text{Eq. 10})$$

Where:

H_e = total monthly organic HAP emitted, kg.

M_{Ci} = sum of the mass of solids-containing coating material, i, applied on intermittently-controllable work stations operating in controlled mode and the mass of solids-containing coating material, i, applied on always-controlled work stations, in a month, kg.

C_{hi} = organic HAP content of coating material, i, expressed as a weight-fraction, kg/kg.

M_{Cj} = sum of the mass of solvent, thinner, reducer, diluent, or other non-solids-containing coating material, j, applied on intermittently-controllable work stations operating in controlled mode and the mass of solvent, thinner, reducer, diluent, or other non-solids-containing

coating material, j, applied on always-controlled work stations in a month, kg.

C_{hj} = organic HAP content of solvent, j, expressed as a weight fraction, kg/kg.

M_{kvr} = mass of volatile matter recovered in a month by solvent recovery device, k, kg.

C_{vi} = volatile matter content of coating material, i, expressed as a weight fraction, kg/kg.

M_{Bi} = sum of the mass of solids-containing coating material, i , applied on intermittently-controllable work stations operating in bypass mode and the mass of solids-containing coating material, i , applied on never-controlled work stations, in a month, kg.

M_{Bj} = sum of the mass of solvent, thinner, reducer, diluent, or other non-solids-containing coating material, j , applied on intermittently-controllable work stations operating in bypass mode and the mass

of solvent, thinner, reducer, diluent, or other non-solids-containing coating material, j , applied on never-controlled work stations, in a month, kg.

p = number of different coating materials applied in a month.

q = number of different solvents, thinners, reducers, diluents, or other non-solids-containing coating materials applied in a month.

s = number of solvent recovery devices used to comply with the standard of § 63.5120 of this subpart, in the facility.

(6) *Control efficiency calculation of HAP emitted.* For each work station or group of work stations for which you use the provisions of paragraphs (g)(2)(ii)(B), (g)(3)(iii)(B), or (g)(4)(ii)(B) of this section, you must calculate the organic HAP emitted during the month, H_e , using Equation 11 of this section:

$$e = \sum_{A=1}^{w_i} \left[\left(\sum_{i=1}^p M_{Ci} C_{hi} + \sum_{j=1}^q M_{Cj} C_{hj} \right) (1 - DRE_k CE_A) \right] + \left[\sum_{i=1}^p M_{Bi} C_{hi} + \sum_{j=1}^q M_{Bj} C_{hj} \right] \quad (\text{Eq. 11})$$

Where:

H_e = total monthly organic HAP emitted, kg.

M_{Ci} = sum of the mass of solids-containing coating material, i , applied on intermittently-controllable work stations operating in controlled mode and the mass of solids-containing coating material, i , applied on always-controlled work stations, in a month, kg.

C_{hi} = organic HAP content of coating material, i , expressed as a weight-fraction, kg/kg.

M_{Cj} = sum of the mass of solvent, thinner, reducer, diluent, or other non-solids-containing coating material, j , applied on intermittently-controllable work stations operating in controlled mode and the mass of solvent, thinner, reducer, diluent, or other non-solids-containing coating material, j , applied on always-controlled work stations in a month, kg.

C_{hj} = organic HAP content of solvent, j , expressed as a weight fraction, kg/kg.

DRE_k = organic volatile matter destruction or removal efficiency of control device, k , percent.

CE_A = organic volatile matter capture efficiency of the capture system for work station, A , percent.

M_{Bi} = sum of the mass of solids-containing coating material, i , applied on intermittently-controllable work stations operating in bypass mode and the mass of solids-containing coating material, i , applied on never-controlled work stations, in a month, kg.

M_{Bj} = sum of the mass of solvent, thinner, reducer, diluent, or other non-solids-containing coating material, j , applied on intermittently-controllable work stations operating in bypass mode and the mass of solvent, thinner, reducer, diluent, or other non-solids-containing coating material, j , applied on never-controlled work stations, in a month, kg.

w_i = number of intermittently-controllable work stations in the facility.

p = number of different coating materials applied in a month.

q = number of different solvents, thinners, reducers, diluents, or other non-solids-containing coating materials applied in a month.

(i) *Capture and control system compliance demonstration procedures*

using a CPMS for a coil coating line. If you use an add-on control device, to demonstrate initial compliance for each capture system and each control device through performance tests and continuing compliance through continuous monitoring of capture system and control device operating parameters, you must meet the requirements in paragraphs (i)(1) through (3) of this section.

(1) Conduct an initial performance test to determine the control device destruction or removal efficiency, DRE, using the applicable test methods and procedures in § 63.5160(d).

(2) Determine the emission capture efficiency, CE, in accordance with § 63.5160(e).

(3) Whenever a coil coating line is operated, continuously monitor the operating parameters established according to § 63.5150(a)(3) and (4) to ensure capture and control efficiency.

Reporting and Recordkeeping

§ 63.5180 What reports must I submit?

(a) Submit the reports specified in paragraphs (b) through (i) of this section to the EPA Regional Office that serves the State or territory in which the affected source is located and to the delegated State agency:

(b) You must submit an initial notification required in § 63.9(b).

(1) Submit an initial notification for an existing source no later than 2 years after June 10, 2002.

(2) Submit an initial notification for a new or reconstructed source as required by § 63.9(b).

(3) For the purpose of this subpart, a title V permit application may be used in lieu of the initial notification required under § 63.9(b), provided the same information is contained in the permit application as required by § 63.9(b), and the State to which the permit application has been submitted has an approved operating permit

program under part 70 of this chapter and has received delegation of authority from the EPA.

(4) Submit a title V permit application used in lieu of the initial notification required under § 63.9(b) by the same due dates as those specified in paragraphs (b)(1) and (2) of this section for the initial notifications.

(c) You must submit a Notification of Performance Test as specified in §§ 63.7 and 63.9(e) if you are complying with the emission standard using a control device. This notification and the site-specific test plan required under § 63.7(c)(2) must identify the operating parameter to be monitored to ensure that the capture efficiency measured during the performance test is maintained. You may consider the operating parameter identified in the site-specific test plan to be approved unless explicitly disapproved, or unless comments received from the Administrator require monitoring of an alternate parameter.

(d) You must submit a Notification of Compliance Status as specified in § 63.9(h). You must submit the Notification of Compliance Status no later than 30 calendar days following the end of the initial 12-month compliance period described in § 63.5130.

(e) You must submit performance test reports as specified in § 63.10(d)(2) if you are using a control device to comply with the emission standards and you have not obtained a waiver from the performance test requirement.

(f) You must submit start-up, shutdown, and malfunction reports as specified in § 63.10(d)(5) if you use a control device to comply with this subpart.

(1) If your actions during a start-up, shutdown, or malfunction of an affected source (including actions taken to correct a malfunction) are not completely consistent with the

procedures specified in the source's start-up, shutdown, and malfunction plan specified in § 63.6(e)(3), you must state such information in the report. The start-up, shutdown, or malfunction report will consist of a letter containing the name, title, and signature of the responsible official who is certifying its accuracy, that will be submitted to the Administrator.

(2) Separate start-up, shutdown, or malfunction reports are not required if the information is included in the report specified in paragraph (g) of this section.

(g) You must submit semi-annual compliance reports containing the information specified in paragraphs (g)(1) and (2) of this section.

(1) Compliance report dates.

(i) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.5130(a) 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 source in § 63.5130(a).

(ii) 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 § 63.5130(a).

(iii) 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.

(iv) 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.

(v) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or part 71, and the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (g)(1)(i) through (iv) of this section.

(2) The semi-annual compliance report must contain the following information:

(i) Company name and address.

(ii) Statement by a responsible official with that official's name, title, and signature, certifying the accuracy of the content of the report.

(iii) Date of report and beginning and ending dates of the reporting period. The reporting period is the 6-month period ending on June 30 or December 31. Note that the information reported for each of the 6 months in the reporting period will be based on the last 12 months of data prior to the date of each monthly calculation.

(iv) Identification of the compliance option or options specified in Table 1 to § 63.5170 that you used on each coating operation during the reporting period. If you switched between compliance options during the reporting period, you must report the beginning dates you used each option.

(v) A statement that there were no deviations from the standards during the reporting period, and that no CEMS were inoperative, inactive, malfunctioning, out-of-control, repaired, or adjusted.

(h) You must submit, for each deviation occurring at an affected source where you are not using CEMS to comply with the standards in this subpart, the semi-annual compliance report containing the information in paragraphs (g)(2)(i) through (iv) of this section and the information in paragraphs (h)(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 of monitor downtime incidents (including unknown cause other than downtime associated with zero and span and other daily calibration checks, if applicable).

(i) You must submit, for each deviation occurring at an affected source where you are using CEMS to comply with the standards in this subpart, the semi-annual compliance report containing the information in paragraphs (g)(2)(i) through (iv) of this section, and the information in paragraphs (i)(1) through (12) of this section:

(1) The date and time that each malfunction started and stopped.

(2) The date and time that each CEMS was inoperative, except for zero (low-level) and high-level checks.

(3) The date and time that each CEMS 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 start-up, shutdown, or malfunction or during another period.

(5) A summary of the total duration of the deviation during the reporting period, and the total duration as a percent of the total source operating time during that reporting period.

(6) A breakdown of the total duration of the deviations during the reporting period into those that are due to start-up, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(7) A summary of the total duration of CEMS downtime during the reporting period, and the total duration of CEMS downtime as a percent of the total source operating time during that reporting period.

(8) A breakdown of the total duration of CEMS downtime during the reporting period into periods that are due to monitoring equipment malfunctions, nonmonitoring equipment malfunctions, quality assurance/quality control calibrations, other known causes, and other unknown causes.

(9) A brief description of the metal coil coating line.

(10) The monitoring equipment manufacturer(s) and model number(s).

(11) The date of the latest CEMS certification or audit.

(12) A description of any changes in CEMS, processes, or controls since the last reporting period.

§ 63.5190 What records must I maintain?

(a) You must maintain the records specified in paragraphs (a) and (b) of this section in accordance with § 63.10(b)(1):

(1) Records of the coating lines on which you used each compliance option and the time periods (beginning and ending dates and times) you used each option.

(2) Records specified in § 63.10(b)(2) of all measurements needed to demonstrate compliance with this subpart, including:

(i) Continuous emission monitor data in accordance with § 63.5150(a)(2);

(ii) Control device and capture system operating parameter data in accordance with § 63.5150(a)(1), (3), and (4);

(iii) Organic HAP content data for the purpose of demonstrating compliance in accordance with § 63.5160(b);

(iv) Volatile matter and solids content data for the purpose of demonstrating compliance in accordance with § 63.5160(c);

(v) Overall control efficiency determination or alternative outlet HAP concentration using capture efficiency tests and control device destruction or removal efficiency tests in accordance with § 63.5160(d), (e), and (f); and

(vi) Material usage, HAP usage, volatile matter usage, and solids usage and compliance demonstrations using these data in accordance with § 63.5170(a), (b), and (d);

(3) Records specified in § 63.10(b)(3); and

(4) Additional records specified in § 63.10(c) for each continuous monitoring system operated by the owner or operator in accordance with § 63.5150(a)(2).

(b) Maintain records of all liquid-liquid material balances that are performed in accordance with the requirements of § 63.5170.

Delegation of Authority

§ 63.5200 What authorities may be delegated to the States?

(a) This subpart can be implemented and enforced by us, the EPA, or a

delegated authority such as your State, local, or tribal agency. If the EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under section 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the EPA Administrator and not transferred to the State, local, or tribal agency.

(c) Authority which will not be delegated to States, local, or tribal agencies:

(1) Approval of alternatives to the emission limitations in § 63.5120;

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.5160;

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.5150; and

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in §§ 63.5180 and 63.5190.

§§ 63.5201—63.5209 [Reserved]

Tables to Subpart SSSS of Part 63

If you are required to comply with operating limits by § 63.5121, you must comply with the applicable operating limits in the following table:

TABLE 1 TO SUBPART SSSS OF PART 63. OPERATING LIMITS IF USING ADD-ON CONTROL DEVICES AND CAPTURE SYSTEM

For the following device . . .	You must meet the following operating limit . . .	And you must demonstrate continuous compliance with the operating limit by . . .
1. thermal oxidizer	a. the average combustion temperature in any 3-hour period must not fall below the combustion temperature limit established according to § 63.5160(d)(3)(i).	i. collecting the combustion temperature data according to § 63.5150(a)(3); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average combustion temperature at or above the temperature limit.
2. catalytic oxidizer	a. the average temperature measured just before the catalyst bed in any 3-hour period must not fall below the limit established according to § 63.5160(d)(3)(ii); and either b. ensure that the average temperature difference across the catalyst bed in any 3-hour period does not fall below the temperature difference limit established according to § 63.5160(d)(3)(ii); or c. develop and implement an inspection and maintenance plan according to § 63.5160(d)(3)(ii).	i. collecting the temperature data according to § 63.5150(a)(3); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average temperature before the catalyst bed at or above the temperature limit. i. collecting the temperature data according to § 63.5150(a)(3); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average temperature difference at or above the temperature difference limit. maintaining an up-to-date inspection and maintenance plan, records of annual catalyst activity checks, records of monthly inspections of the oxidizer system, and records of the annual internal inspections of the catalyst bed. If a problem is discovered during a monthly or annual inspection required by § 63.5160(d)(3)(ii), you must take corrective action as soon as practicable consistent with the manufacturer's recommendations.
3. emission capture system	develop a monitoring plan that identifies operating parameter to be monitored and specifies operating limits according to § 63.5150(a)(4).	conducting monitoring according to the plan § 63.5150(a)(4).

You must comply with the applicable General Provisions requirements according to the following table:

TABLE 2 TO SUBPART SSSS OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART SSSS

General provisions reference	Applicable to subpart SSSS	Explanation
§ 63.1(a)(1)–(4)	Yes.	
§ 63.1(a)(5)	No	Reserved.
§ 63.1(a)(6)–(8)	Yes.	
§ 63.1(a)(9)	No	Reserved.

TABLE 2 TO SUBPART SSSS OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART SSSS—Continued

General provisions reference	Applicable to subpart SSSS	Explanation
§ 63.1(a)(10)–(14)	Yes.	
§ 63.1(b)(1)	No	Subpart SSSS specifies applicability.
§ 63.1(b)(2)–(3)	Yes.	
§ 63.1(c)(1)	Yes.	
§ 63.1(c)(2)	Yes.	
§ 63.1(c)(3)	No	Reserved.
§ 63.1(c)(4)	Yes.	
§ 63.1(c)(5)	Yes.	
§ 63.1(d)	No	Reserved.
§ 63.1(e)	Yes.	
§ 63.2	Yes	Additional definitions in subpart SSSS.
§ 63.3(a)–(c)	Yes.	
§ 63.4(a)(1)–(3)	Yes.	
§ 63.4(a)(4)	No	Reserved.
§ 63.4(a)(5)	Yes.	
§ 63.4(b)–(c)	Yes.	
§ 63.5(a)(1)–(2)	Yes.	
§ 63.5(b)(1)	Yes.	
§ 63.5(b)(2)	No	Reserved.
§ 63.5(b)(3)–(6)	Yes.	
§ 63.5(c)	No	Reserved.
§ 63.5(d)	Yes	Only total HAP emissions in terms of tons per year are required for § 63.5(d)(1)(ii)(H).
§ 63.5(e)	Yes.	
§ 63.5(f)	Yes.	
§ 63.6(a)	Yes.	
§ 63.6(b)(1)–(5)	Yes.	
§ 63.6(b)(6)	No	Reserved.
§ 63.6(b)(7)	Yes.	
§ 63.6(c)(1)–(2)	Yes.	
§ 63.6(c)(3)–(4)	No	Reserved.
§ 63.6(c)(5)	Yes.	
§ 63.6(d)	No	Reserved.
§ 63.6(e)	Yes	Provisions in § 63.6(e)(3) pertaining to startups, shutdowns, malfunctions, and CEMS only apply if an add-on control system is used.
§ 63.6(f)	Yes.	
§ 63.6(g)	Yes.	
§ 63.6(h)	No	Subpart SSSS does not require continuous opacity monitoring systems (COMS).
§ 63.6(i)(1)–(14)	Yes.	
§ 63.6(i)(15)	No	Reserved.
§ 63.6(i)(16)	Yes.	
§ 63.6(j)	Yes.	
§ 63.7	Yes	With the exception of § 63.7(a)(2)(vii) and (viii), which are reserved.
§ 63.8(a)(1)–(2)	Yes.	
§ 63.8(a)(3)	No	Reserved.
§ 63.8(a)(4)	Yes.	
§ 63.8(b)	Yes.	
§ 63.8(c)(1)–(3)	Yes	Provisions only apply if an add-on control system is used.
§ 63.8(c)(4)	No.	
§ 63.8(c)(5)	No	Subpart SSSS does not require COMS.
§ 63.8(c)(6)	Yes	Provisions only apply if CEMS are used.
§ 63.8(c)(7)–(8)	Yes.	
§ 63.8(d)–(e)	Yes	Provisions only apply if CEMS are used.
§ 63.8(f)(1)–(5)	Yes.	
§ 63.8(f)(6)	No	Section 63.8(f)(6) provisions are not applicable because subpart SSSS does not require CEMS.
§ 63.8(g)(1)–(4)	Yes.	
§ 63.8(g)(5)	No.	
§ 63.9(a)	Yes.	
§ 63.9(b)(1)	Yes.	
§ 63.9(b)(2)	Yes	With the exception that § 63.5180(b)(1) provides 2 years after the proposal date for submittal of the initial notification.
§ 63.9(b)(3)–(5)	Yes.	
§ 63.9(c)–(e)	Yes.	
§ 63.9(f)	No	Subpart SSSS does not require opacity and visible emissions observations.
§ 63.9(g)	No	Provisions for COMS are not applicable.
§ 63.9(h)(1)–(3)	Yes.	

TABLE 2 TO SUBPART SSSS OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART SSSS—Continued

General provisions reference	Applicable to subpart SSSS	Explanation	
§ 63.9(h)(4)	No	Reserved.	
§ 63.9(h)(5)–(6)	Yes.		
§ 63.9(i)	Yes.		
§ 63.9(j)	Yes.		
§ 63.10(a)	Yes.		
§ 63.10(b)(1)–(3)	Yes		Provisions pertaining to startups, shutdowns, malfunctions, and maintenance of air pollution control equipment and to CEMS do not apply unless an add-on control system is used. Also, paragraphs (b)(2)(vi), (x), (xi), and (xiii) do not apply.
§ 63.10(c)(1)	No.		
§ 63.10(c)(2)–(4)	No	Reserved.	
§ 63.10(c)(5)–(8)	No.		
§ 63.10(c)(9)	No	Reserved.	
§ 63.10(c)(10)–(15)	No.		
§ 63.10(d)(1)–(2)	Yes.		
§ 63.10(d)(3)	No	Subpart SSSS does not require opacity and visible emissions observations.	
§ 63.10(d)(4)–(5)	Yes.		
§ 63.10(e)	No.		
§ 63.10(f)	Yes.		
§ 63.11	Yes.		
§ 63.12	Yes.		
§ 63.13	Yes.		
§ 63.14	Yes .....			Subpart SSSS includes provisions for alternative ASTM and ASME test methods that are incorporated by reference.
§ 63.15	Yes.		

[FR Doc. 02–12772 Filed 6–7–02; 8:45 am]

BILLING CODE 6560–50–P



Federal Register

**Monday,
June 10, 2002**

Part III

Department of Labor

Office of the Secretary

29 CFR Part 35

**Nondiscrimination on the Basis of Age in
Programs or Activities Receiving Federal
Financial Assistance From the
Department of Labor; Proposed Rule**

DEPARTMENT OF LABOR**Office of the Secretary****29 CFR Part 35**

RIN 1291-AA21

Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance From the Department of Labor**AGENCY:** Office of the Secretary, Labor.**ACTION:** Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) sets out the Department of Labor (DOL) rules for implementing the Age Discrimination Act of 1975, as amended (the Age Act). The Age Act prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. This NPRM is a republication of an NPRM published on December 29, 1998 (63 FR 71714). DOL is republishing the NPRM for two reasons: To reflect the passage of the Workforce Investment Act of 1998 (WIA), which replaced the Job Training Partnership Act, as amended, and the publication of an interim final rule implementing the nondiscrimination and equal opportunity provisions of WIA; and to add the term "program or activity" as it is defined by the Civil Rights Restoration Act of 1987 (CRRA), and modify language in DOL's Age Act rule to accommodate that term and definition. These changes do not alter the substance of the December 29, 1998, NPRM.

DATES: Comments must be received by August 9, 2002.

ADDRESSES: Address all comments about this proposed rule to Annabelle T. Lockhart, Director, Civil Rights Center (CRC), Frances Perkins Building, 200 Constitution Ave., NW., Room N-4123, Washington, DC 20210. Brief comments (maximum five pages) may be submitted by facsimile machine (FAX) to 202/693-6505. Receipt of submissions, whether by mail or by FAX transmittal, will not be acknowledged; however, the sender may request confirmation that a submission has been received, by telephoning the Civil Rights Center (CRC) at (202) 693-6500 (VOICE) or (202) 693-6515 or (800) 326-2577 (TTY/TDD).

Comments that CRC receives will be available for public inspection at DOL during normal business hours. Appropriate aids are available on request to persons needing assistance to review the comments. In addition, copies of this proposed rule are

available, upon request, in large print and electronic file on computer disk. Other formats will be considered upon request. To schedule an appointment to review the comments and/or to obtain the proposed rule in an alternate format, contact CRC at the telephone number or address listed above.

FOR FURTHER INFORMATION CONTACT: Annabelle T. Lockhart, Director, CRC, (202) 693-6500 (VOICE) or (202) 693-6515 (TTY).

SUPPLEMENTARY INFORMATION:**I. Background Information**

The Age Discrimination Act of 1975, 42 U.S.C. 6101 *et seq.*, prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Age Act applies to discrimination at all age levels. The Age Act also contains specific exceptions that permit the use of certain age distinctions and factors other than age that meet the Age Act's requirements. The Age Act required the former Department of Health, Education, and Welfare (HEW) to issue general, government-wide regulations setting standards to be followed by all Federal agencies implementing the Age Act. These government-wide regulations, which were issued on June 12, 1979 (45 CFR part 90; 44 FR 33768) and became effective on July 1, 1979, require each Federal agency providing financial assistance to any program or activity to publish final regulations implementing the Age Act, and to submit final agency regulations to HEW (now the Department of Health and Human Services (HHS)), before publication in the **Federal Register**. (See 45 CFR 90.31.)

The Age Act became effective on the effective date of HEW's final government-wide regulations (*i.e.*, July 1, 1979). The Department of Labor (DOL) has enforced the provisions of the Age Act since that time. As a practical matter, the absence of DOL-specific age regulations has not had an impact on DOL's legal authority to enforce prohibitions against discrimination on the basis of age in programs or activities receiving Federal financial assistance from DOL. Most financial assistance from DOL is distributed under the Workforce Investment Act of 1998 (29 USC 2801 *et seq.*) and its predecessor statutes (the Comprehensive Employment and Training Act (Pub. L. 93-203, Pub. L. 93-567) and the Job Training Partnership Act (29 U.S.C. 794)). Since 1979 discrimination based on age has been prohibited in these programs, and regulatory enforcement mechanisms have existed under them.

II. Rulemaking History

On December 29, 1998, DOL published a Notice of Proposed Rulemaking (NPRM) to implement the Age Act. See 63 FR 71714 (1998). The 60-day notice and comment period for the submission of comments to DOL ended March 1, 1999. No comments were received by DOL regarding the December 29, 1998, proposal. DOL then intended to publish a final age rule at that juncture. However, since December 29, 1998, two events have brought about the need to republish this rule as a NPRM.

The first was the passage of the Workforce Investment Act of 1998 (WIA). On July 1, 2000, the WIA replaced the Job Training Partnership Act, as amended, (JTPA) as the major instrument for DOL-assisted education, training and employment programs. The December, 1998, NPRM made several references to JTPA and its implementing regulations, found at Title 29 CFR part 34. The regulation being proposed today makes reference to the nondiscrimination and equal opportunity provisions of WIA (section 188) and the regulations implementing section 188. On November 12, 1999, DOL published an interim final rule (IFR) implementing section 188. This IFR was published at 29 CFR part 37. See 64 FR 61692 (1999).

The second reason for the republication of the December, 1998, NPRM is to conform the rule to certain statutory amendments to the Age Act made by the Civil Rights Restoration Act of 1987 (Pub. L. 100-259)(CRRA). The principal proposed conforming change is to add the definition of "program or activity" that corresponds to the statutory definition enacted under the CRRA.

The Department's financial-assistance based civil rights regulations (e.g., Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973), when originally issued and implemented, were interpreted by DOL to mean that acceptance of Federal assistance by an entity resulted in broad institutional coverage. In *Grove City College v. Bell*, 465 U.S. 555, 571-72 (1984) (*Grove City College*), the Supreme Court held, in a case involving Title IX of the Education Amendments of 1972 (Title IX), that the provision of Federal student financial assistance to a college resulted in Federal jurisdiction to ensure Title IX compliance in the specific program receiving the assistance, *i.e.*, the student financial aid office, but that the Federal student financial assistance would not provide jurisdiction over the entire institution.

Following the Supreme Court's decision in *Grove City College*, DOL changed its interpretation, but not the language of the governing Title VI and Section 504 regulations, to be consistent with the Court's restrictive, "program specific" definition of "program or activity." Since Title IX was patterned after Title VI, *Grove City College* significantly narrowed the coverage of Title VI and the two other statutes based on it: Section 504 and the Age Act. See S. Rep. No. 100-64, at 2-3, 11-16 (1987).

In 1988, the CRRA was enacted to "restore the prior consistent and longstanding executive branch interpretation and broad, institution-wide application of those laws as previously administered." 20 U.S.C. 1687 note 1. Congress enacted the CRRA in order to remedy what it perceived to be a serious narrowing by the Supreme Court of a longstanding administrative interpretation of the coverage of the regulations. At that time, DOL reinstated its broad interpretation to be consistent with the CRRA, again without changing the language of the regulations. It was and remains DOL's consistent interpretation that, with regard to the differences between the interpretation of the regulations given by the Supreme Court in *Grove City College*, and the language of the CRRA, the CRRA, which took effect upon enactment, supersedes the *Grove City College* decision and, therefore, the regulations must be read in conformity with the CRRA in all their applications.

This interpretation reflects the understanding of Congress, as expressed in the legislative history of the CRRA, that the statutory definition of "program or activity" would take effect immediately, by its own force, without

the need for Federal agencies to amend their existing regulations. S. Rep. No. 100-64, at 32. The legislative history also evidences congressional concern about the Federal agencies' immediate need to address complaints and findings of discrimination in federally assisted schools under the CRRA definition of "program or activity," and includes examples demonstrating why the CRRA was "urgently" needed. See S. Rep. No. 100-64, at 11-16.

The proposed regulatory change described in the previous paragraphs address an issue recently raised by the Third Circuit Court of Appeals in *Cureton v. NCAA*, 198 F.3d 107, 115-16 (1999) (*Cureton*). That court determined that, because the Department of Health and Human Services (HHS) did not amend its Title VI regulation after the enactment of the CRRA, application of HHS's Title VI regulation to disparate impact discrimination claims is "program specific" (i.e., limited to specific programs in an institution affected by the Federal funds), rather than institution-wide (i.e., applicable to all of the operations of the institution regardless of the use of the Federal funds). In the court's view, the regulations should clarify the application of the broad institutional coverage to disparate impact claims, because the disparate impact analysis appears in a regulation, and not in a statute. The proposed regulatory changes would explicitly incorporate the definition of "program or activity" that corresponds to the definition enacted under the CRRA and thereby remove any doubt that DOL's rule implementing the Age Act applies institution-wide to both disparate impact discrimination and disparate

treatment discrimination. ("Disparate treatment" refers to policies or practices that treat individuals differently based on their race, color, national origin, sex, disability, or age, as applicable. Disparate treatment is generally barred by the civil rights statutes and regulations. "Disparate impact" refers to criteria or methods of administration that have a significant disparate effect on individuals based on race, color, national origin, sex, disability, or age, as applicable. Those criteria or practices may constitute impermissible discrimination based on legal standards that include consideration of their necessity.) DOL's Title IX rule, published in final form on August 30, 2000 at 29 CFR part 36 (see 65 FR 52858) incorporates the CRRA definition of "program or activity." Further, on December 6, 2000, DOL proposed to amend its Title VI and Section 504 regulations to incorporate the terms "program or activity" or "program" and their definition consistent with the CRRA.

III. Overview of NPRM—Changes From December 28, 1998, NPRM

The NPRM being published today differs little from the NPRM published on December 28, 1998; and the language changes in today's NPRM do not affect the substance of the December 28, 1998, NPRM. However, DOL is republishing the entire rule for notice and comment. The public is invited to comment on any or all of its provisions.

The following table identifies sections in this proposed rule containing changes relating to the term "program or activity" as that term is defined in the CRRA:

Section	Description of language changes
35.1	In the second sentence, the phrase "programs and activities" is changed to "programs or activities".
35.2	In the section title, the phrase "programs and activities" is changed to "programs or activities".
35.2(c)(1)(iii)(2)	The phrase "joint apprenticeship training program" has been changed to "joint apprenticeship training".
32.3	The definition of "program or activity" has been added.
35.16	The phrase "normal operation of the program" has been changed to "normal operation of the program or activity".
35.17	The phrase "objective of the program" has been changed to "objective of the program or activity".
35.20	The phrase "programs and activities" has been changed to "programs or activities".
35.21	The phrase "specific programs" has been changed to "specific programs or activities".
35.33	The phrase "Federal program agency" has been changed to "Federal agency".
35.38(b)(2)	The phrase "program or activity" has been changed to "Federal financial assistance".

In keeping with the changes described in the above table, in the title of the rule the phrase "programs and activities" has been changed to "programs or activities."

Today's NPRM proposes additional changes in three sections. First, in the December 28, 1998, NPRM, Section 35.2(b) proposed that compliance with section 167 of JTPA and its

implementing regulations would satisfy the obligation of recipients of Federal financial assistance from DOL under JTPA to comply with part 35. DOL has replaced the JTPA references with WIA

references. DOL invites commenters to specifically address the interrelationship between the Age Act and its regulations and the nondiscrimination and equal opportunity provisions of WIA and its implementing regulations.

Second, section 35.2(c)(iii)(2) of the December 28, 1998, NPRM made reference to JTPA. That reference has been changed to WIA.

Third, today's NPRM contains a slight modification in the language of proposed section 35.26(a). The parallel section of the December 28, 1998, NPRM proposed that the Civil Rights Center (CRC) may require a recipient receiving financial assistance from DOL to complete a written self-evaluation of an age distinction imposed under its program or activity. The proposed section stated that this requirement would be part of a compliance review or a complaint investigation conducted under the regulations implementing the Age Act or JTPA. CRC is concerned that a reference to the self-evaluation obligation being imposed in connection with financial assistance received under JTPA, or successor laws, could be misconstrued as limiting CRC's authority to request a self-evaluation in programs and activities receiving DOL financial assistance under other laws. Accordingly, proposed section 35.26(a) has been revised to delete reference to JTPA.

Readers are referred to the NPRM published at 63 FR 71714 (December 29, 1998) for an additional detailed discussion of the sections not modified by this proposed rule.

IV. Regulatory Procedures

Executive Order 12866

These proposed Age Discrimination Act regulations have been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this proposed rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, yet is not economically significant as defined in section 3(f)(1), and, therefore, the information enumerated in section 6(a)(3)(C) of the order is not required. Pursuant to Executive Order 12866, this rule has been reviewed by the Office of Management and Budget.

Unfunded Mandates Reform

Executive Order 12875—This proposed rule would not create an unfunded Federal mandate on any State, local or tribal government.

Unfunded Mandates Reform Act of 1995—This proposed rule would not

include any Federal mandate that might result in increased expenditures by State, local and tribal governments, in the aggregate, of \$100 million or more, or increased expenditures by the private sector of \$100 million or more.

Regulatory Flexibility Act

The proposed rule clarifies existing requirements for entities receiving financial assistance from DOL. The requirements prohibiting age discrimination by recipients of Federal financial assistance that are in the Age Act and the government-wide regulations have been in effect since 1979. In addition, entities receiving financial assistance from DOL under WIA, have been expressly informed of their obligations to comply with the Age Act by both WIA statutory language and by the DOL regulations implementing WIA. Because the proposed rule would not substantively change existing obligations on recipients, but merely clarifies such duties, the Department certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Consequently, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This proposed rule does not impose new information collection requirements subject to the Paperwork Reduction Act.

Executive Order 13132

These proposed regulations have been reviewed in accordance with Executive Order 13132 regarding Federalism. This rule would 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, the requirements of section 6 of Executive Order 13132 do not apply to this rule.

List of Subjects in 29 CFR Part 35

Administrative practice and procedure, Age discrimination, Children, Civil rights, Elderly, Grant programs—Labor.

Signed at Washington, DC this 3rd day of June, 2002.

Elaine L. Chao,
Secretary of Labor.

For the reasons set out in the preamble, 29 CFR subtitle A is proposed to be amended by adding a new part 35 to read as follows:

PART 35—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM THE DEPARTMENT OF LABOR

Subpart A—General

Sec.

- 35.1 What is the purpose of the Department of Labor (DOL) age discrimination regulations?
35.2 To what programs or activities do these regulations apply?
35.3 What definitions apply to these regulations?

Subpart B—Standards for Determining Age Discrimination

- 35.10 Rules against age discrimination.
35.11 Definitions of the terms "normal operation" and "statutory objective."
35.12 Exceptions to the rules against age discrimination: normal operation or statutory objective of any program or activity.
35.13 Exceptions to the rules against age discrimination: reasonable factors other than age.
35.14 Burden of proof.
35.15 Affirmative action by a recipient.
35.16 Special benefits for children and the elderly.
35.17 Age distinctions in DOL regulations.

Subpart C—Duties of DOL Recipients

- 35.20 General responsibilities.
35.21 Recipient responsibility to provide notice.
35.22 Information requirements.
35.23 Assurances required.
35.24 Designation of responsible employee.
35.25 Complaint procedures.
35.26 Recipient assessment of age distinctions.

Subpart D—Investigation, Conciliation, and Enforcement Procedures

- 35.30 Compliance reviews.
35.31 Complaints.
35.32 Mediation.
35.33 Investigations.
35.34 Effect of agreements on enforcement effort.
35.35 Prohibition against intimidation or retaliation.
35.36 Enforcement.
35.37 Hearings, decisions, and post-termination proceedings.
35.38 Procedure for disbursement of funds to an alternate recipient.
35.39 Remedial action by recipient.
35.40 Exhaustion of administrative remedies.

Authority: 42 U.S.C. 6101 et. seq.; 45 CFR part 90.

Subpart A—General

§ 35.1 What is the purpose of the Department of Labor (DOL) age discrimination regulations?

The purpose of this part is to set out the DOL rules for implementing the Age Discrimination Act of 1975, as amended. The Act prohibits

discrimination on the basis of age by recipients of Federal financial assistance and in federally assisted programs or activities, but permits the use of certain age distinctions and factors other than age that meet the requirements of the Act and this part.

§ 35.2 To what programs or activities do these regulations apply?

(a) *Application.* This part applies to any program or activity that receives Federal financial assistance, directly or indirectly, from DOL.

(b) *Compliance with 29 CFR part 37.* Compliance with Section 188 of the Workforce Investment Act of 1998 (WIA) (29 U.S.C. 2938) and implementing regulations at 29 CFR part 37, will satisfy the obligations of recipients of Federal financial assistance from DOL under WIA to comply with this part. CRC will use the legal standards in subpart B of this part when evaluating whether a WIA recipient has engaged in unlawful age discrimination.

(c) *Limitation of application.* This part does not apply to:

(1) An age distinction contained in that part of a Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body that:

- (i) Provides persons with any benefits or assistance based on age; or
- (ii) Establishes criteria for participation in age-related terms; or
- (iii) Describes intended beneficiaries or target groups in age-related terms;

(2) Any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprentice training, except any program or activity receiving Federal financial assistance under the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.).

§ 35.3 What definitions apply to these regulations?

As used in this part:

Act means the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 et seq.).

Action means any act, activity, policy, rule, standard, or method of administration, or the use of any policy, rule, standard, or method of administration.

Age means how old a person is, or the number of years from the date of a person's birth.

Age distinction means any action using age or an age-related term.

Age-related term means a word or words that necessarily imply a particular age or range of ages (e.g., "child," "adults," "older persons," but not "student").

Applicant for Federal financial assistance means the individual or entity submitting an application, request, or plan required to be approved by a DOL official or recipient as a condition to becoming a recipient or subrecipient.

Beneficiary means the person(s) intended by Congress to receive benefits or services from a recipient of Federal financial assistance from DOL.

CRC means the Civil Rights Center, Office of the Assistant Secretary for Administration and Management, United States Department of Labor.

Department means the United States Department of Labor.

Director means the Director of CRC.

DOL means the United States Department of Labor.

Federal financial assistance means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which DOL provides or otherwise makes available assistance in the form of:

- (1) Funds;
- (2) Services of Federal personnel; or
- (3) Real and personal property or any interest in or use of property, including:
 - (i) Transfers or leases of property for less than fair market value or for reduced consideration; and
 - (ii) Proceeds from a subsequent transfer or lease of property if the Federal share of its fair market value is not returned to the Federal Government.

Program or activity means all of the operations of—

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each department or agency (and each other State or local government entity) to which assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 8801 of Title 20 of the United States Code), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education,

health care, housing social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraphs (1), (2) or (3) of this definition; any part of which is extended Federal financial assistance.

Recipient means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance from DOL is extended, directly or through another recipient, but excludes the ultimate beneficiary of the assistance. Recipient includes any subrecipient to which a recipient extends or passes on Federal financial assistance, and any successor, assignee, or transferee of a recipient.

Secretary means the Secretary of Labor, or his or her designee.

State means the individual States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands, American Samoa, Wake Island and the Commonwealth of the Northern Mariana Islands.

Subpart B—Standards for Determining Age Discrimination

§ 35.10 Rules against age discrimination.

The rules stated in this section are subject to the exceptions contained in §§35.12 and 35.13.

(a) *General rule.* No person in the United States shall be, on the basis of age, excluded from participation in, denied the benefits of or subjected to discrimination under, any program or activity receiving Federal financial assistance from DOL.

(b) *Specific rules.* A recipient may not, directly or through contractual, licensing, or other arrangements, use age distinctions or take any other actions that have the effect of, on the basis of age:

(1) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program or activity receiving Federal financial assistance from DOL; or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance from DOL.

(c) *Other forms of age discrimination.* The listing of specific forms of age discrimination in paragraph (b) of this section is not exhaustive and does not imply that any other form of age discrimination is permitted.

§ 35.11 Definitions of the terms “normal operation” and “statutory objective.”

As used in this part, the term:

(a) *Normal operation* means the operation of a program or activity without significant changes that would impair the ability of the program or activity to meet its objectives.

(b) *Statutory objective* means any purpose of a program or activity expressly stated in any Federal statute, State statute, or local statute or ordinance adopted by an elected, general purpose legislative body.

§ 35.12 Exceptions to the rules against age discrimination: normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action otherwise prohibited by § 35.10 if the action reasonably takes age into account as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes age into account as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity if:

(a) Age is used as a measure or approximation of one or more other characteristics;

(b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity;

(c) The other characteristic(s) can reasonably be measured or approximated by the use of age; and

(d) The other characteristic(s) are impractical to measure directly on an individual basis.

§ 35.13 Exceptions to the rules against age discrimination: reasonable factors other than age.

A recipient is permitted to take an action otherwise prohibited by § 35.10, if that action is based on a reasonable factor other than age, even though the action may have a disproportionate effect on persons of different ages. An action is based on a reasonable factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 35.14 Burden of proof.

The recipient has the burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 35.12 and 35.13.

§ 35.15 Affirmative action by a recipient.

Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation on the basis of age in the recipient's program or activity.

§ 35.16 Special benefits for children and the elderly.

If a recipient is operating a program or activity that provides special benefits to the elderly or to children, the use of such age distinctions is presumed to be necessary to the normal operation of the program or activity, notwithstanding the provisions of § 35.12.

§ 35.17 Age distinctions in DOL regulations.

Any age distinction in regulations issued by DOL is presumed to be necessary to the achievement of a statutory objective of the program or activity to which the regulations apply, notwithstanding the provisions of § 35.12.

Subpart C—Duties of DOL Recipients

§ 35.20 General responsibilities.

Each DOL recipient has primary responsibility for ensuring that its programs or activities are in compliance with the Act and this part and for taking appropriate steps to correct any violations of the Act or this part.

§ 35.21 Recipient responsibility to provide notice.

(a) *Notice to other recipients.* Where a recipient of Federal financial assistance from DOL passes on funds to other recipients, that recipient shall notify such other recipients of their obligations under the Act and this part.

(b) *Notice to beneficiaries.* A recipient shall notify its beneficiaries about the provisions of the Act and this part and their applicability to specific programs or activities. The notification must also identify the responsible employee designated under § 35.24 by name or title, address, and telephone number.

§ 35.22 Information requirements.

Each recipient shall:

(a) Keep such records as CRC determines are necessary to ascertain whether the recipient is complying with the Act and this part;

(b) Upon request, provide CRC with such information and reports as the Director determines are necessary to

ascertain whether the recipient is complying with the Act and this part; and

(c) Permit reasonable access by CRC to books, records, accounts, reports, other recipient facilities and other sources of information to the extent CRC determines is necessary to ascertain whether the recipient is complying with the Act and this part.

§ 35.23 Assurances required.

A recipient or applicant for Federal financial assistance from DOL shall sign a written assurance, in a form specified by DOL, that the program or activity will be operated in compliance with the Act and this part. In subsequent applications to DOL, an applicant may incorporate this assurance by reference.

§ 35.24 Designation of responsible employee.

Each recipient shall designate at least one employee to coordinate its compliance activities under the Act and this part, including investigation of any complaints that the recipient receives alleging any actions that are prohibited by the Act or this part.

§ 35.25 Complaint procedures.

Each recipient shall adopt and publish complaint procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by the Act or this part.

§ 35.26 Recipient assessment of age distinctions.

(a) In order to assess a recipient's compliance with the Act and this part, as part of a compliance or monitoring review, or a complaint investigation, CRC may require a recipient employing the equivalent of 15 or more full-time employees to complete a written self-evaluation, in a manner specified by CRC, of any age distinction imposed in its program or activity receiving Federal financial assistance from DOL.

(b) Whenever such an assessment indicates a violation of the Act or this part, the recipient shall take prompt and appropriate corrective action.

Subpart D—Investigation, Conciliation, and Enforcement Procedures

§ 35.30 Compliance reviews.

(a) CRC may conduct such compliance reviews, pre-award reviews, and other similar procedures as permit CRC to investigate and correct violations of the Act and this part, irrespective of whether a complaint has been filed against a recipient. Such reviews may be as comprehensive as necessary to

determine whether a violation of the Act or this part has occurred.

(b) Where a review conducted pursuant to paragraph (a) of this section indicates a violation of the Act or this part, CRC will attempt to achieve voluntary compliance. If voluntary compliance cannot be achieved, CRC will begin enforcement proceedings, as described in § 35.36.

§ 35.31 Complaints.

(a) *Who may file.* Any person, whether individually, as a member of a class, or on behalf of others, may file a complaint with CRC alleging discrimination in violation of the Act or this part, based on an action occurring on or after July 1, 1979.

(b) *When to file.* A complainant must file a complaint within 180 days from the date the complainant first had knowledge of the alleged act of discrimination. The Director may extend this time limit for good cause shown.

(c) *Complaint procedure.* A complaint is considered to be complete on the date CRC receives all the information necessary to process it, as provided in paragraph (c)(1) of this section. CRC will:

(1) Accept as a complete complaint any written statement that identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and is signed by the complainant;

(2) Freely permit a complainant to add information to the complaint to meet the requirements of a complete complaint;

(3) Notify the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure; and

(4) Notify the complainant and the recipient (or their representatives) of their right to contact CRC for information and assistance regarding the complaint resolution process.

(d) *No jurisdiction.* CRC will return to the complainant any complaint outside the jurisdiction of this part, with a statement indicating why there is no jurisdiction.

§ 35.32 Mediation.

(a) *Referral to mediation.* CRC will promptly refer to the Federal Mediation and Conciliation Service or the mediation agency designated by the Secretary of Health and Human Services under 45 CFR part 90, all complaints that:

(1) Fall within the jurisdiction of the Act or this part, unless the age

distinction complained of is clearly within an exemption under § 35.2(c); and

(2) Contain all information necessary for further processing, as provided in § 35.31(c)(1).

(b) *Participation in mediation process.* Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or to make an informed judgment that an agreement is not possible. The recipient and the complainant do not need to meet with the mediator at the same time, and a meeting may be conducted by telephone or other means of effective dialogue if a personal meeting between the party and the mediator is impractical.

(c) *When agreement is reached.* If the complainant and the recipient reach an agreement, the mediator shall prepare a written statement of the agreement, have the complainant and recipient sign it, and send a copy of the agreement to CRC.

(d) *Confidentiality.* The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator may testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process, unless the mediator has obtained prior approval of the head of the mediation agency.

(e) *Maximum time period for mediation.* The mediation shall proceed for a maximum of 60 days after a complaint is filed with CRC. This 60-day period may be extended by the mediator, with the concurrence of the Director, for not more than 30 days, if the mediator determines that agreement is likely to be reached during the extended period. In the absence of such an extension, mediation ends if:

(1) 60 days elapse from the time the complaint is filed; or

(2) Prior to the end of the 60-day period, either

(i) An agreement is reached; or

(ii) The mediator determines that agreement cannot be reached.

(f) *Unresolved complaints.* The mediator shall return unresolved complaints to CRC.

§ 35.33 Investigations.

(a) *Initial investigation.* CRC will investigate complaints that are unresolved after mediation or reopened because the mediation agreement has been violated.

(1) As part of the initial investigation, CRC will use informal fact-finding methods, including joint or separate discussions with the complainant and

recipient to establish the facts and, if possible, resolve the complaint to the mutual satisfaction of the parties. CRC may seek the assistance of any involved State, local, or other Federal agency.

(2) Where agreement between the parties has been reached pursuant to paragraph (a)(1) of this section, the agreement shall be put in writing by DOL, and signed by the parties and an authorized official of DOL.

(b) *Formal findings, conciliation, and hearing.* If CRC cannot resolve the complaint during the early stages of the investigation, CRC will complete the investigation of the complaint and make formal findings. If the investigation indicates a violation of the Act or this part, CRC will attempt to achieve voluntary compliance. If CRC cannot obtain voluntary compliance, CRC will begin appropriate enforcement action, as provided in § 35.36.

§ 35.34 Effect of agreements on enforcement effort.

An agreement reached pursuant to either § 35.32(c) or § 35.33(a) shall have no effect on the operation of any other enforcement effort of DOL, such as compliance reviews and investigations of other complaints, including those against the recipient.

§ 35.35 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act or this part; or

(b) Cooperates in any mediation, investigation, hearing or other part of CRC's investigation, conciliation, and enforcement process.

§ 35.36 Enforcement.

(a) DOL may enforce the Act and this part through:

(1) Termination of, or refusal to grant or continue, a recipient's Federal financial assistance from DOL under the program or activity in which the recipient has violated the Act or this part. Such enforcement action may be taken only after a recipient has had an opportunity for a hearing on the record before an administrative law judge.

(2) Any other means authorized by law, including, but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligation of the recipient created by the Act or this part; or

(ii) Use of any requirement of, or referral to, any Federal, State, or local government agency that will have the effect of correcting a violation of the Act or this part.

(b) Any termination or refusal under paragraph (a)(1) of this section will be limited to the particular recipient and to the particular program or activity found to be in violation of the Act or this part. A finding with respect to a program or activity that does not receive Federal financial assistance from DOL will not form any part of the basis for termination or refusal.

(c) No action may be taken under paragraph (a) of this section until:

(1) DOL has advised the recipient of its failure to comply with the Act or with this part and has determined that voluntary compliance cannot be obtained; and

(2) Thirty days have elapsed since DOL sent a written report of the circumstances and grounds of the action to the committees of Congress having jurisdiction over the program or activity involved.

(d) *Deferral.* DOL may defer granting new Federal financial assistance to a recipient when termination proceedings under paragraph (a)(1) of this section are initiated.

(1) New Federal financial assistance from DOL includes all assistance for which DOL requires an application or approval, including renewal or continuation of existing activities, or authorization of new activities, during the deferral period. New Federal financial assistance from DOL does not include increases in funding as a result of changed computation of formula awards or assistance approved prior to the initiation of a hearing under paragraph (a)(1) of this section.

(2) DOL may not defer a grant until the recipient has received notice of an opportunity for a hearing under paragraph (a)(1) of this section. A deferral may not continue for more than 60 days unless a hearing has begun within the 60-day period or the recipient and DOL have mutually agreed

to extend the time for beginning the hearing. If the hearing does not result in a finding against the recipient, the deferral may not continue for more than 30 days after the close of the hearing.

§ 35.37 Hearings, decisions, and post-termination proceedings.

The provisions applicable to enforcement procedures under the nondiscrimination and equal opportunity provisions of WIA, found at 29 CFR 37.111, 37.112 and 37.115, apply to CRC's enforcement of the Act and this part.

§ 35.38 Procedure for disbursement of funds to an alternate recipient.

(a) If funds are withheld from a recipient under this part, the Secretary may disburse the funds withheld directly to an alternate recipient.

(b) The Secretary will require any alternate recipient to demonstrate:

(1) The ability to comply with the Act and this part; and

(2) The ability to achieve the goals of the Federal statute authorizing the Federal financial assistance.

§ 35.39 Remedial action by recipient.

Where CRC finds discrimination on the basis of age in violation of this Act or this part, the recipient shall take any remedial action that CRC deems necessary to overcome the effects of the discrimination. In addition, if a recipient funds or otherwise exercises control over another recipient that has discriminated, both recipients may be required to take remedial action.

§ 35.40 Exhaustion of administrative remedies.

(a) A complainant may file a civil action under the Act following the exhaustion of administrative remedies. Administrative remedies are exhausted if:

(1) One hundred eighty days have elapsed since the complainant filed the complaint with CRC, and CRC has made no finding with regard to the complaint; or

(2) CRC issues any finding in favor of the recipient.

(b) If CRC fails to make a finding within 180 days, or issues a finding in favor of the recipient, CRC will promptly:

(1) Notify the complainant;

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant that—

(i) The complainant may bring a civil action only in a United States district court for the district in which the recipient is found or transacts business;

(ii) A complainant who prevails in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint filed with the court;

(iii) Before commencing the action, the complainant must give 30 days notice by registered mail to the Secretary, the Secretary of Health and Human Services, the Attorney General of the United States, and the recipient;

(iv) The notice required by paragraph (b)(3)(iii) of this section must state the alleged violation of the Act, the relief requested, the court in which the complainant is bringing the action, and whether or not attorney's fees are demanded in the event that the complainant prevails; and

(v) The complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

[FR Doc. 02-14458 Filed 6-7-02; 8:45 am]

BILLING CODE 4510-23-P



Federal Register

**Monday,
June 10, 2002**

Part IV

Department of Justice

**28 CFR Part 16
Privacy Act of 1974; Implementation;
Proposed Rule and Notice**

DEPARTMENT OF JUSTICE**28 CFR PART 16**

[AAG/A Order No. 270–2002]

Privacy Act of 1974; Implementation**AGENCY:** Department of Justice, Foreign Terrorist Tracking Task Force (FTTTTF).**ACTION:** Proposed rule.

SUMMARY: The Department of Justice proposes to exempt a Privacy Act system of records from subsections (c)(3), (d)(1), (2), (3) and (4), and (e)(1) and (4)(I) of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(1). The system of records to be exempted is the “Flight Training Candidates File System, JUSTICE/FTTTTF–001.”

The Flight Training Candidates File System is a system of records established pursuant to section 113 of the Aviation and Transportation Security Act (ATSA), Public Law 107–71, 49 U.S.C. 44939 to support the administration of the required risk assessment of candidates for flight instruction who are aliens or persons designated by the Under Secretary of Transportation for Security, U.S. Department of Transportation. Subsequent to the terrorist hijacking and crashing of aircraft on September 11, 2001, Congress determined that aliens seeking training in the operation of aircraft with a takeoff weight of 12,500 pounds or more should be subject to closer scrutiny. Pursuant to section 113 of ATSA, persons who wish to provide such training to aliens or others designated by the Under Secretary of Transportation for Security must first notify the Attorney General, and provide identifying information with regard to the prospective trainee, so that the Attorney General may determine whether the prospective trainee poses a risk to aviation or national security.

The exemption is necessary as explained in the accompanying proposed rule.

DATES: Submit any comments by July 10, 2002.

ADDRESSES: Address all comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

FOR FURTHER INFORMATION CONTACT: Mary Cahill, (202) 307–1823.

SUPPLEMENTARY INFORMATION: In the notice section of today’s **Federal Register**, the Department of Justice provides a description of the “Flight Training Candidates File System, JUSTICE/FTTTTF–001.”

This order relates to individuals as well as small business entities. In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–602, the Attorney General, by approving this regulation, certifies that this rule will not have “a significant economic impact on a substantial number of small entities.”

List of Subjects in 28 CFR Part 16

Administrative Practices and Procedures, Courts, Freedom of Information Act, Government in the Sunshine Act, and the Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend part 16 of Title 28 of the Code of Federal Regulations as follows:

PART 16—[AMENDED]**Subpart E—Exemption of Records Systems Under the Privacy Act.**

1. The authority citation for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 524; 31 U.S.C. 3717, 9701.

2. Section 16.105 is added to subpart E to read as follows:

§ 16.105 Exemption of Foreign Terrorist Tracking Task Force System.

(a) The following system of records is exempt from 5 U.S.C. 552a, subsections (c)(3), (d)(1), (2), (3) and (4), and (e)(1) and (4)(I): Flight Training Candidates File System (JUSTICE/FTTTTF–001). This exemption applies only to the extent that information is subject to exemption pursuant to 5 U.S.C. 552a(k)(1).

(b) Exemption from the particular subsections is justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures could reveal information that is classified in the interest of national security.

(2) From subsection (d)(1), (2), (3) and (4) because access to and amendment of certain portions of records within the system would tend to reveal or compromise information classified in the interest of national security.

(3) From subsection (e)(1) because it is often impossible to determine in advance if information obtained will be relevant for the purposes of conducting the risk analysis for flight training candidates.

(4) From subsection (e)(4)(I) to the extent that this subsection is interpreted to require more detail regarding the record sources in this system than have been published in the **Federal Register**. Should the subsection be so interpreted, exemption from this provision is necessary because greater specificity concerning the sources of these records could compromise national security.

Dated: June 5, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

[FR Doc. 02–14614 Filed 6–6–02; 2:35 pm]

BILLING CODE 4410–FB–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 269-2002]

Privacy Act of 1974: System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice, Foreign Terrorist Tracking Task Force (FTTTF), is establishing a new system of records entitled "Flight Training Candidates File System, JUSTICE/FTTTF-001."

The Flight Training Candidates File System is a system of records established pursuant to Section 113 of the Aviation and Transportation Security Act (ATSA), Public Law 107-71, 49 U.S.C. 44939, to support the administration of the required risk assessment of candidates for flight instruction who are aliens or persons designated by the Under Secretary of Transportation for Security, U.S. Department of Transportation. Subsequent to the terrorist hijacking and crashing of aircraft on September 11, 2001, Congress determined that aliens seeking training in the operation of aircraft with a takeoff weight of 12,500 pounds or more should be subject to closer scrutiny. Pursuant to section 113 of the ATSA, persons who wish to provide such training to aliens or others designated by the Under Secretary of Transportation for Security must first notify the Attorney General, and provide identifying information with regard to the prospective trainee, so that the Attorney General may determine whether the prospective trainee poses a risk to aviation or national security.

It is likely that the majority of the persons in this system of records will be foreign nationals who are not permanent resident aliens of the United States and, therefore, are not covered by the provisions of the Privacy Act. This notice is intended for flight training candidates and flight instructors whose personal information is included in this system of records and who are covered by the provisions of the Privacy Act because they are either United States citizens or permanent resident aliens.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to the Office of Management and Budget and the Congress.

Dated: June 5, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

JUSTICE/FTTTF-001

SYSTEM NAME:

Flight Training Candidates File System, FTTTF-001.

SYSTEM LOCATION:

Foreign Terrorist Tracking Task Force (FTTTF), U.S. Department of Justice, Washington, DC 20530

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Aliens and persons designated by the Under Secretary of Transportation for Security, U.S. Department of Transportation, pursuant to section 113 of the Aviation and Transportation Security Act (ATSA) who are seeking training from a Federal Aviation Administration (FAA) certificated instructor in the operation of any aircraft with maximum certificated takeoff weight of 12,500 pounds or more ("flight training candidates"); flight instructors who wish to provide such training ("providers").

CATEGORIES OF RECORDS IN THE SYSTEM:

Flight training candidate applications and identifying information contained therein (e.g., name, date of birth, place of birth, country of residence, education, travel, etc.); authorizations for the release of information; basic identifying information of providers (e.g., name, address, telephone number, FAA certification number); classified risk assessment reports; records received from the Federal Bureau of Investigation regarding the results of its fingerprint and name checks of the flight training candidate; and electronic copies of correspondence to flight training candidates, providers, the Immigration and Naturalization Service and the Department of State advising them as to whether individual candidates have been determined to pose a risk to aviation or national security.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 113 of the Aviation and Transportation Security Act, Pub. L. 107-71, codified at 49 U.S.C. 44939; Homeland Security Presidential Directive-2, October 29, 2001, "Combating Terrorism Through Immigration Policies."

PURPOSE(S):

The system will be used to collect information and conduct the risk assessments required under section 113 of ATSA.

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

Routine uses may be published at a later date with an opportunity for comment. In the interim, disclosures will be made only with the written consent of the individuals.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

All data in this system is maintained solely in electronic form.

RETRIEVABILITY:

Data is retrieved by the name of the flight training candidate or the provider.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable rules and policies, including the Department's automated systems security and access policies. Classified information is appropriately stored in secure facilities, databases, and containers and in accordance with other applicable requirements. In general, records and technical equipment are maintained in buildings with restricted access. The required system protection methods also restrict access. Access is limited to those who have a need for access to perform their official duties.

RETENTION AND DISPOSAL:

Records concerning an individual will be deleted from the system when: (a) The individual reaches 99 years of age or 5 years have elapsed since a report of the individual's death; or (b) when no longer needed for reference, whichever is sooner (pending approval of the Archivist of the United States).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Foreign Terrorist Tracking Task Force, Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530.

NOTIFICATION PROCEDURES:

Address inquiries to the System Manager named above.

RECORD ACCESS PROCEDURES:

Any flight training candidate or provider who submits information into the system will be able to view online the information they submit through the use of a password. U.S. citizens and Permanent Resident Aliens may seek access to additional information about a request for training by writing to the System Manager listed above. The request should include a general description of the records sought and must include the requester's full name, current address and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury. Some information may be exempt from access as described in the section entitled "Systems Exempted from Certain Provisions of the Act." A determination as to whether a

record may be accessed will be made at the time a request is received.

CONTESTING RECORD PROCEDURES:

U.S. Citizens or Permanent Resident Aliens who wish to contest, or seek amendment of, the information maintained in the system should direct their requests to the System Manager listed above. Requests should clearly and concisely state what information is being contested, the reason(s) for contesting it, and the proposed amendment to the record. Some information may be exempt from amendment and contesting record procedures as described in the section entitled "Systems Exempted from

Certain Provisions of the Act." A determination as to whether a record may be amended will be made at the time a request is received.

RECORD SOURCE CATEGORIES:

Information in this system of records will be obtained from flight training candidates; providers; and individuals or entities having information pertinent to the determination of risk to aviation or national security, including but not limited to purveyors of public source data, governmental entities, and the FAA.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3), (d)(1), (2), (3) and (4), and (e)(1) and (4)(I) of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(1). This exemption applies only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(k)(1).

Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**.

[FR Doc. 02-14615 Filed 6-6-02; 2:35 pm]

BILLING CODE 4410-FB-P

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current

session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-523-6641. This list is also available online at <http://www.nara.gov/fedreg/plawcurr.html>.

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H.R. 1840/P.L. 107-185

To extend eligibility for refugee status of unmarried sons and daughters of certain Vietnamese refugees. (May 30, 2002; 116 Stat. 587)

H.R. 4782/P.L. 107-186

To extend the authority of the Export-Import Bank until June 14, 2002. (May 30, 2002; 116 Stat. 589)

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0-99	(869-044-00100-4)	45.00	July 1, 2001	266-299	(869-044-00156-0)	45.00	July 1, 2001
100-499	(869-044-00101-2)	14.00	⁶ July 1, 2001	300-399	(869-044-00157-8)	41.00	July 1, 2001
500-899	(869-044-00102-1)	47.00	⁶ July 1, 2001	400-424	(869-044-00158-6)	51.00	July 1, 2001
900-1899	(869-044-00103-9)	33.00	July 1, 2001	425-699	(869-044-00159-4)	55.00	July 1, 2001
1900-1910 (§§ 1900 to 1910.999)	(869-044-00104-7)	55.00	July 1, 2001	700-789	(869-044-00160-8)	55.00	July 1, 2001
1910 (§§ 1910.1000 to end)	(869-044-00105-5)	42.00	July 1, 2001	790-End	(869-044-00161-6)	44.00	July 1, 2001
1911-1925	(869-044-00106-3)	20.00	⁶ July 1, 2001	41 Chapters:			
1926	(869-044-00107-1)	45.00	July 1, 2001	1, 1-1 to 1-10		13.00	³ July 1, 1984
1927-End	(869-044-00108-0)	55.00	July 1, 2001	1, 1-11 to Appendix, 2 (2 Reserved)		13.00	³ July 1, 1984
30 Parts:				3-6		14.00	³ July 1, 1984
1-199	(869-044-00109-8)	52.00	July 1, 2001	7		6.00	³ July 1, 1984
200-699	(869-044-00110-1)	45.00	July 1, 2001	8		4.50	³ July 1, 1984
700-End	(869-044-00111-7)	53.00	July 1, 2001	9		13.00	³ July 1, 1984
31 Parts:				10-17		9.50	³ July 1, 1984
0-199	(869-044-00112-8)	32.00	July 1, 2001	18, Vol. I, Parts 1-5		13.00	³ July 1, 1984
200-End	(869-044-00113-6)	56.00	July 1, 2001	18, Vol. II, Parts 6-19		13.00	³ July 1, 1984
32 Parts:				18, Vol. III, Parts 20-52		13.00	³ July 1, 1984
1-39, Vol. I		15.00	² July 1, 1984	19-100		13.00	³ July 1, 1984
1-39, Vol. II		19.00	² July 1, 1984	1-100	(869-044-00162-4)	22.00	July 1, 2001
1-39, Vol. III		18.00	² July 1, 1984	101	(869-044-00163-2)	45.00	July 1, 2001
1-190	(869-044-00114-4)	51.00	⁶ July 1, 2001	102-200	(869-044-00164-1)	33.00	July 1, 2001
191-399	(869-044-00115-2)	57.00	July 1, 2001	201-End	(869-044-00165-9)	24.00	July 1, 2001
400-629	(869-044-00116-8)	35.00	⁶ July 1, 2001	42 Parts:			
630-699	(869-044-00117-9)	34.00	July 1, 2001	1-399	(869-044-00166-7)	51.00	Oct. 1, 2001
700-799	(869-044-00118-7)	42.00	July 1, 2001	400-429	(869-044-00167-5)	59.00	Oct. 1, 2001
800-End	(869-044-00119-5)	44.00	July 1, 2001	430-End	(869-044-00168-3)	58.00	Oct. 1, 2001
33 Parts:				43 Parts:			
1-124	(869-044-00120-9)	45.00	July 1, 2001	1-999	(869-044-00169-1)	45.00	Oct. 1, 2001
125-199	(869-044-00121-7)	55.00	July 1, 2001	1000-end	(869-044-00170-5)	56.00	Oct. 1, 2001
200-End	(869-044-00122-5)	45.00	July 1, 2001	44	(869-044-00171-3)	45.00	Oct. 1, 2001
34 Parts:				45 Parts:			
1-299	(869-044-00123-3)	43.00	July 1, 2001	1-199	(869-044-00172-1)	53.00	Oct. 1, 2001
300-399	(869-044-00124-1)	40.00	July 1, 2001	200-499	(869-044-00173-0)	31.00	Oct. 1, 2001
400-End	(869-044-00125-0)	56.00	July 1, 2001	500-1199	(869-044-00174-8)	45.00	Oct. 1, 2001
35	(869-044-00126-8)	10.00	⁶ July 1, 2001	1200-End	(869-044-00175-6)	55.00	Oct. 1, 2001
36 Parts:				46 Parts:			
1-199	(869-044-00127-6)	34.00	July 1, 2001	1-40	(869-044-00176-4)	43.00	Oct. 1, 2001
200-299	(869-044-00128-4)	33.00	July 1, 2001	41-69	(869-044-00177-2)	35.00	Oct. 1, 2001
300-End	(869-044-00129-2)	55.00	July 1, 2001	70-89	(869-044-00178-1)	13.00	Oct. 1, 2001
37	(869-044-00130-6)	45.00	July 1, 2001	90-139	(869-044-00179-9)	41.00	Oct. 1, 2001
38 Parts:				140-155	(869-044-00180-2)	24.00	Oct. 1, 2001
0-17	(869-044-00131-4)	53.00	July 1, 2001	156-165	(869-044-00181-1)	31.00	Oct. 1, 2001
18-End	(869-044-00132-2)	55.00	July 1, 2001	166-199	(869-044-00182-9)	42.00	Oct. 1, 2001
39	(869-044-00133-1)	37.00	July 1, 2001	200-499	(869-044-00183-7)	36.00	Oct. 1, 2001
40 Parts:				500-End	(869-044-00184-5)	23.00	Oct. 1, 2001
1-49	(869-044-00134-9)	54.00	July 1, 2001	47 Parts:			
50-51	(869-044-00135-7)	38.00	July 1, 2001	0-19	(869-044-00185-3)	55.00	Oct. 1, 2001
52 (52.01-52.1018)	(869-044-00136-5)	50.00	July 1, 2001	20-39	(869-044-00186-1)	43.00	Oct. 1, 2001
52 (52.1019-End)	(869-044-00137-3)	55.00	July 1, 2001	40-69	(869-044-00187-0)	36.00	Oct. 1, 2001
53-59	(869-044-00138-1)	28.00	July 1, 2001	70-79	(869-044-00188-8)	58.00	Oct. 1, 2001
60 (60.1-End)	(869-044-00139-0)	53.00	July 1, 2001	80-End	(869-044-00189-6)	55.00	Oct. 1, 2001
60 (Apps)	(869-044-00140-3)	51.00	July 1, 2001	48 Chapters:			
61-62	(869-044-00141-1)	35.00	July 1, 2001	1 (Parts 1-51)	(869-044-00190-0)	60.00	Oct. 1, 2001
63 (63.1-63.599)	(869-044-00142-0)	53.00	July 1, 2001	1 (Parts 52-99)	(869-044-00191-8)	45.00	Oct. 1, 2001
63 (63.600-63.1199)	(869-044-00143-8)	44.00	July 1, 2001	2 (Parts 201-299)	(869-044-00192-6)	53.00	Oct. 1, 2001
63 (63.1200-End)	(869-044-00144-6)	56.00	July 1, 2001	3-6	(869-044-00193-4)	31.00	Oct. 1, 2001
64-71	(869-044-00145-4)	26.00	July 1, 2001	7-14	(869-044-00194-2)	51.00	Oct. 1, 2001
72-80	(869-044-00146-2)	55.00	July 1, 2001	15-28	(869-044-00195-1)	53.00	Oct. 1, 2001
81-85	(869-044-00147-1)	45.00	July 1, 2001	29-End	(869-044-00196-9)	38.00	Oct. 1, 2001
86 (86.1-86.599-99)	(869-044-00148-9)	52.00	July 1, 2001	49 Parts:			
86 (86.600-1-End)	(869-044-00149-7)	45.00	July 1, 2001	1-99	(869-044-00197-7)	55.00	Oct. 1, 2001
87-99	(869-044-00150-1)	54.00	July 1, 2001	100-185	(869-044-00198-5)	60.00	Oct. 1, 2001
				186-199	(869-044-00199-3)	18.00	Oct. 1, 2001
				200-399	(869-044-00200-1)	60.00	Oct. 1, 2001
				400-999	(869-044-00201-9)	58.00	Oct. 1, 2001
				1000-1199	(869-044-00202-7)	26.00	Oct. 1, 2001

Title	Stock Number	Price	Revision Date
1200-End	(869-044-00203-5)	21.00	Oct. 1, 2001
50 Parts:			
1-199	(869-044-00204-3)	63.00	Oct. 1, 2001
200-599	(869-044-00205-1)	36.00	Oct. 1, 2001
600-End	(869-044-00206-0)	55.00	Oct. 1, 2001
CFR Index and Findings			
Aids	(869-044-00047-4)	56.00	Jan. 1, 2001
Complete 2001 CFR set		1,195.00	2001
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2000
Individual copies		2.00	2000
Complete set (one-time mailing)		290.00	2000
Complete set (one-time mailing)		247.00	1999

¹ Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

² The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

³ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

⁴ No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

⁵ No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

⁶ No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.