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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–250–AD; Amendment 39–12932; AD 2002–22–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires a one-time inspection for missing bolts on the inboard and outboard support of the inboard main flap, and follow-on inspections and corrective actions, if necessary. This amendment adds an inspection that was inadvertently omitted from the existing AD. The actions specified in this AD are intended to detect missing, loose, or cracked bolts on the supports of the inboard main flap and prevent loss of the inboard main flap, which could result in loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective November 14, 2002.

The incorporation by reference, as listed in the regulations, was approved previously by the Director of the Federal Register as of August 27, 2002 (67 FR 52401, August 12, 2002).

Comments for inclusion in the Rules Docket must be received on or before December 30, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–250–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–250–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On August 1, 2002, the FAA issued AD 2002–16–05, amendment 39–12844 (67 FR 52401, August 12, 2002), applicable to certain Boeing Model 767 series airplanes, to require a one-time inspection for missing bolts on the inboard and outboard support of the inboard main flap, and follow-on inspections and corrective actions, if necessary. That action was prompted by a report indicating that an operator found one missing bolt and two loose bolts out of four bolts at the aft attachment locations on the outboard support of the inboard main flap. The actions required by that AD are necessary to detect missing, loose, or cracked bolts on the supports of the inboard main flap and prevent loss of the inboard main flap, which could result in loss of control of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of AD 2002–16–05, we have found that, for certain airplanes, the one-time inspection to determine if any bolt is missing from the inboard support of the inboard main flap, as specified in the referenced service bulletin, was inadvertently omitted from the current requirements of the AD. That inspection was identified in the preamble of the existing AD.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 2002–16–05 to continue to require a one-time inspection for missing bolts on the outboard support of the inboard main flap, and follow-on inspections and corrective actions, if necessary. This AD also adds a one-time inspection for missing bolts on the inboard support of the inboard main flap.

Interim Action

This is considered to be interim action. We are currently considering requiring the repetitive inspections for gaps, the torque check for loose bolts, and the replacement of existing titanium bolts with steel bolts described in the referenced service bulletin. However, the compliance time for these actions would be sufficiently long so that notice and opportunity for prior public comment will be practicable.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that

supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the 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 that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–250–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12844 (67 FR 52401, August 12, 2002), and by adding a new airworthiness directive (AD), amendment 39–12932, to read as follows:

2002–22–07 Boeing: Amendment 39–12932. Docket 2002–NM–250–AD. Supersedes AD 2002–16–05, amendment 39–12844.

Applicability: Model 767 series airplanes, including Model 767–400ER series airplanes, line numbers 1 through 879 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect missing, loose, or cracked bolts on the inboard and outboard support of the inboard main flap and prevent loss of the inboard main flap, which could result in loss of control of the airplane, accomplish the following:

Restatement of Requirements of AD 2002–16–05

Group 1 and 2 Airplanes: One-Time Inspection for Missing or Loose Bolts

(a) Within 90 days after August 27, 2002 (the effective date of AD 2002–16–05, amendment 39–12844), do a one-time general visual inspection to determine if any bolt is missing from the outboard support of the inboard main flap, per Part 2 or Part 8, as applicable, of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002. Group 1 airplanes may comply with the replacement specified in paragraph (c) of this AD in lieu of the inspection in this paragraph, provided that the replacement per paragraph (c) of this AD is accomplished within the compliance time specified in this paragraph.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(1) If no bolt is missing, before further flight, do a general visual inspection for a gap between the nut and surrounding structure or between shim and joint (which would indicate a loose bolt), per Part 2 or Part 8, as applicable, of the Accomplishment Instructions of the service bulletin. If no bolt is missing and no gap is found, no further action is required by this paragraph.

(2) If any bolt is missing, before further flight, do paragraph (b) of this AD. In lieu of paragraph (b) of this AD, airplanes in Group 1 may comply with paragraph (c) of this AD.

Group 1 and 2 Airplanes: Missing Bolts or Gaps—Follow-On Actions

(b) For Group 1 or 2 airplanes as listed in Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002: If any bolt is missing or any gap is found during the inspections per paragraph (a) of this AD, before further flight, remove all of the bolts in the subject area and replace them with new or serviceable bolts, per Figure 6, 7, or 8 of the service bulletin, as applicable. For any attachment hole where the bolt was missing, install a new or serviceable bolt made from the same material as the other bolts, per the Accomplishment Instructions of the service bulletin.

(1) An existing bolt may be reinstalled if a fluorescent dye penetrant inspection for cracking is done per Part 5 of the Accomplishment Instructions of the service bulletin, and the bolt is found to be free of any crack.

(2) Do not intermix BACB30MR*K* bolts with BACB30LE*K* or BACB30US*K* bolts in the joints subject to this AD.

Group 1 Airplanes: Optional Action

(c) For Group 1 airplanes as listed in Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002: Replacement of all subject titanium bolts with new steel bolts per Part 6 of the Accomplishment Instructions of the service bulletin is acceptable for compliance with paragraphs (a) and (f) of this AD and eliminates the need

for the inspections required by those paragraphs. Do not intermix BACB30MR*K* bolts with BACB30LE*K* or BACB30US*K* bolts in the joints subject to this AD.

Model 767–400ER Series Airplanes: Initial Inspection and Corrective Actions

(d) For Model 767–400ER series airplanes: Within 90 days after August 27, 2002, do a one-time general visual inspection to determine if any bolt is missing from the inboard and outboard support of the inboard main flap, and do a detailed inspection for a gap between the nut and surrounding structure or between shim and joint (which would indicate a loose bolt), per Figure 2 of Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002.

(1) If no bolt is missing and no gap is found: No further action is required by this paragraph.

(2) If any bolt bolt is missing or any gap is found: Do paragraphs (d)(2)(i) and (d)(2)(ii) of this AD.

(i) Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved as required by this paragraph, the approval must specifically refer to this AD.

(ii) Within 10 days after the inspections: Submit a report of inspection findings to the Manager, Boeing Certificate Management Office, FAA, Transport Airplane Directorate, 2500 East Valley Road, Suite C2, Renton, Washington 98055; fax (425) 227–1159. The report must include the airplane's serial number, the total number of flight cycles and flight hours on the airplane, the number and specific location of discrepant bolts, and the nature of the discrepancy (i.e., missing bolt or gap found). Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Previously Accomplished Inspections and Bolt Replacements

(e) Inspections and bolt replacements accomplished before the effective date of this AD per Boeing Alert Service Bulletin 767–27A0176, dated November 16, 2001, are acceptable for compliance with the corresponding actions required by this AD.

New Requirements of This AD

Group 1 and 2 Airplanes: One-Time Inspection for Missing or Loose Bolts

(f) Within 90 days after the effective date of this AD: Do the one-time general visual inspection required by paragraph (a) of this AD to determine if any bolt is missing from the inboard support of the inboard main flap, per Part 2 or Part 8, as applicable, of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002. Group 1 airplanes may comply with the replacement specified in paragraph (c) of this AD in lieu of the inspection in this paragraph, provided that the replacement per paragraph (c) of this AD is accomplished within the compliance time specified in this paragraph.

Alternative Methods of Compliance

(g)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2002–16–05, amendment 39–12844, are approved as alternative methods of compliance with paragraph (d)(2)(i) of this AD.

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

Special Flight Permits

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

Incorporation by Reference

(i) Unless otherwise provided in this AD, the actions shall be done per Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002. This incorporation by reference was approved previously by the Director of the Federal Register as of August 27, 2002 (67 FR 52401, August 12, 2002). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(j) This amendment becomes effective on November 14, 2002.

Issued in Renton, Washington, on October 24, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–27557 Filed 10–29–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

Food Additives Permitted for Direct Addition to Food for Human Consumption

CFR Correction

In Title 21 of the Code of Federal Regulations, parts 170 to 199, revised as of April 1, 2002, on page 31, § 172.133 is corrected by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 172.133 Dimethyl dicarbonate.

* * * * *

(b) * * *

(2) In ready–to–drink teas in an amount not to exceed 250 parts per million.

(3) In carbonated or noncarbonated, nonjuice–containing (less than or equal to 1 percent juice), flavored or unflavored beverages containing added electrolytes (5–20 milliequivalents/liter sodium ion (Na+) and 3–7 milliequivalents/liter potassium ion (K+)) in an amount not to exceed 250 parts per million.

* * * * *

[FR Doc. 02–55523 Filed 10–29–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 4181]

Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act: XIX Olympic Winter Games and VIII Paralympic Winter Games in Salt Lake City, UT, 2002

AGENCY: Department of State, Bureau of Consular Affairs.

ACTION: Removal of interim rule.

SUMMARY: The Department of State is removing its interim rule on special procedures relating to visa documentation and visa processing for the 2002 Winter Olympic and Paralympic Games in Salt Lake City. Now that the 2002 Winter Games are over there is no longer a need for the interim rule.

DATES: This final rule is effective August 1, 2002.

FOR FURTHER INFORMATION CONTACT: For information regarding the publication of this regulation under the Administrative

Procedures Act Ron Acker, Legislation and Regulations Division, Visa Office, Room L603–D, SA–1, Department of State, Washington, D.C. 20520–0106, (202) 663–1205; or e-mail: *ackerrl@state.gov.* For information regarding the possible effect of this regulation on individual visa applicants or any group of applicants contact the Public Inquiries Division of the Directorate for Visa Services at (202) 663–1225, or by e-mail to *usvisa@state.gov.*

SUPPLEMENTARY INFORMATION:

What Is the Background for This Final Rule?

On July 25, 2001, we published in the **Federal Register** (66 FR 38536) an interim rule entitled, ''Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act; Application for Nonimmigrant Visa: XIX Olympic Winter Games and VIII Paralympic Winter Games in Salt Lake City, UT, 2002.'' We received no comments on the interim rule.

The interim rule was published to provide the Department of State with legal authority to administer special visa procedures attendant to the 2002 Olympic and Paralympic Games and to issue visas on Olympic and Paralympic Identity/Accreditation Cards through the Olympic Visa Information Database (OVID 2002).

Why Is the Interim Rule Being Removed?

The Winter Olympic and Paralympic Games concluded February 24, and March 16, 2002, respectively. Consequently, the interim rule providing for special visa procedures for these two events no longer serves a practical purpose and is, consequently, hereby being removed.

Final Rule

This final rule amends the Department's regulations at 41.101, 41.102, 41.103, 41.104, 41.107, 41.112, 41.113, and 41.122.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department is publishing this rule as a final rule, based on the ''good cause'' exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3).

Regulatory Flexibility Act

Pursuant to section 605 of the Regulatory Flexibility Act, the Department has assessed the potential impact of this rule, and the Assistant Secretary for Consular Affairs hereby certifies that is not expected to have a significant economic impact on a substantial number of small entities and will benefit those that engage temporary agricultural workers.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 12866

The Department of State does not consider this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Therefore, in accordance with the letter to the Department of State of February 4, 1994 from the Director of the Office of Management and Budget, it does not require review by the Office of Management and Budget.

Executive Order 13132

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

Paperwork Reduction Act

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

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Passports and visas.

Accordingly, the Department amends 22 CFR part 41 as follows:

PART 41—[AMENDED]

1. The authority citation for part 41 continues to read as follows:

Authority: 8 U.S.C. 1104; Public Law 105–277, 112 Stat. 2681 *et seq.*

§ 41.101 [Amended]

2. Remove paragraph (g) of § 41.101.

§ 41.102 [Amended]

3. Remove paragraph (c) of § 41.102.

§ 41.103 [Amended]

4. Remove paragraph (c) of § 41.103.

§ 41.104 [Amended]

5. Remove paragraph (e) of § 41.104.

§ 41.107 [Amended]

6. Remove paragraph (f) of § 41.107.

§ 41.112 [Amended]

7. Remove paragraph (f) of § 41.112.

§ 41.113 [Amended]

8. Remove paragraphs (i), (j) and (k) of § 41.113.

§ 41.122 [Amended]

9. Remove paragraphs (i) and (j) of § 41.122.

Dated: October 25, 2002.

Timothy Egert,

Federal Register Liaison, Department of State.

[FR Doc. 02–27595 Filed 10–29–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC65

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

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Corrections to final regulations.

SUMMARY: This document contains corrections to the final regulations published on Friday, May 17, 2002 (67 FR 35398). The final regulations related to decommissioning activities, and included requirements for plugging a well, decommissioning a platform and pipeline, and clearing a lease site. The

corrections being made are non-substantive and are necessary for clarification purposes only.

EFFECTIVE DATE: July 16, 2002.

FOR FURTHER INFORMATION CONTACT: Sharon Buffington, (703) 787–1147.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections add a new subpart Q to the 30 CFR part 250 regulations. They update decommissioning requirements to reflect changes in technology to ensure that lessees and pipeline right-of-way holders conduct decommissioning operations safely and effectively. The new subpart Q supersedes subpart G (Abandonment of Wells) in its entirety and selected sections of subpart J (Pipeline and Pipeline Rights-of-Way), and subpart I (Platforms and Other Facilities). The effective date of the regulations is July 17, 2002, and they affect all operators, lessees, and pipeline right-of-way holders on the Outer Continental Shelf.

Need for Correction

As published, the final regulations contain some non-substantive items which could prove to be misleading and should be clarified. Explanations for the main issues follow:

(1) In several places, we are correcting inaccurate citation references in the preamble and regulatory language.

(2) Our response to a comment recommending that MMS include the requirements for the removal of subsea equipment, indicated that they are ''* * * handled case-by-case. * * * Too many variables exist to specify the requirements in regulations.'' We further stated that, ''However, lessees can assume that equipment must be removed *unless* the requirements of §§ 250.1725 through 250.1728. * * *'' The word ''unless'' should have been ''under'' to indicate that the assumption is that subsea equipment must be removed and any exceptions would need MMS district office approval on a case-by-case basis.

(3) The new subpart Q includes the requirements for both permanent plugging and temporary plugging or abandonment of a well. With respect to the latter, the regulations interchanged the terms temporarily ''abandoned'' and temporarily ''plugged.'' In order to be as consistent as possible throughout our various regulations and with terms used on our forms and other documents, we are correcting the final regulations to consistently refer to this temporary status of a well as ''abandoned.''

(4) The table in § 250.1704 was intended as a quick reference listing of when decommissioning applications and reports are submitted. We are correcting the table to redesignate paragraph (f) as (g), and to add a new paragraph (f) to reference the site clearance report for platforms or other facilities. The redesignated paragraph (g) is corrected by adding additional references for when form MMS–124 must be submitted. These were inadvertently omitted from the table. Subsequent to publishing the final 30 CFR 250, subpart Q, regulations, through a separate process, the title of this form is being changed from ''Sundry Notices and Reports on Wells'' to ''Application for Permit to Modify.'' This change is reflected in this correction document.

(5) In § 250.1712 paragraphs (e) and (f)(14) are corrected to eliminate duplicative language.

(6) In the table in § 250.1715 on permanent well plugging requirements, we are clarifying the requirements to indicate that the ''plug(s)'' are ''set.'' Also, the line item on ''permafrost areas'' was inadvertently omitted and is added to the table as item (10).

(7) In §§ 250.1712 and 250.1717, the correction clarifies that the form MMS–124 reports should be submitted to the ''appropriate District Supervisor.''

(8) The introductory text in § 250.1726 is clarified to include ''pipeline rights-of-way'' as well as leases.

(9) In § 250.1740, paragraphs (a) and (b) are corrected to allow for options other than trawling to verify site clearance around wells. This was an inadvertent oversight in the final rule and the correction agrees with the proposed rule language.

(10) Sections 1740(c)(3) and 250.1743(b) are corrected to specify ''Regional'' rather than the ''District'' Supervisor.

(11) This document also makes other editorial corrections for clarification.

Correction of Publication

The preamble of the final rule published on May 17, 2002, which was the subject of FR Doc. 02–11640, is corrected as follows:

Preamble [Corrected]

On page 35400, in the 1st column, in the 7th paragraph under the heading *Section 250.1715 (Proposed section 250.1710),* the citation ''§ 250.1710(i)'' is corrected to read ''§ 250.1710(j)'.

On page 35401, in the 1st column, in the 4th paragraph, the words '' and 250.142'' are added after the citation ''30 CFR 250.141''.

On page 35401, in the 2nd column, in the 1st sentence, the word ''unless'' is corrected to read ''under'' and the words ''are met'' are removed.

PART 250—[CORRECTED]

Part 250 is corrected by making the following correcting amendments:

Subpart Q—Decommissioning Activities [Corrected]

§ 250.1700 [Corrected]

1. In § 250.1700, the 2nd sentence in paragraph (c) is corrected by removing ''templates and pilings'' and adding in its place ''templates, pilings''.

2. The table in § 250.1704 is corrected as follows:

A. The heading in the 1st column of the table is revised to read ''Decommissioning applications and reports''.

B. Paragraph (f) in the 1st column is correctly designated as paragraph (g), and is revised to read as set forth below.

C. A new paragraph (f) is added in the 1st column with corresponding entries in the 2nd and 3rd columns as set forth below.

§ 250.1704 When must I submit decommissioning applications and reports?

* * * * *

Decommissioning applications and reports	When to submit	Instructions
* *	* * *	* *
(f) Site clearance report for a platform or other facility.	Within 30 days after you complete site clearance verification activities.	Include information required under § 250.1743(b).
(g) Form MMS–124, Application for Permit to Modify (formerly Sundry Notices and Reports on Wells).	(1) Before you temporarily abandon or permanently plug a well or zone.	Include information required under §§ 250.1712 and 250.1721.
	(2) Within 30 days after you plug a well	Include information required under § 250.1717.

Decommissioning applications and reports	When to submit	Instructions
	(3) Before you install a subsea protective device.	Refer to § 250.1722(a).
	(4) Within 30 days after you complete a protective device trawl test.	Include information required under § 250.1722(d).
	(5) Before you remove any casing stub or mud line suspension equipment and any subsea protective device.	Refer to § 250.1723.
	(5) Within 30 days after you complete site clearance verification activities.	Include information required under § 250.1743(a).

3. Section 250.1712 is corrected by revising the 1st sentence in the introductory text and paragraphs (e) and (f)(14) to read as follows:

§ 250.1712 What information must I submit before I permanently plug a well or zone?

Before you permanently plug a well or zone, you must submit form MMS–124, Application for Permit to Modify, to the appropriate District Supervisor and receive approval. * * *

* * * * *

(e) A description of the work; and

(f) * * *

(14) Your plans to protect archaeological and sensitive biological features, including anchor damage during plugging operations, a brief assessment of the environmental impacts of the plugging operations, and the procedures and mitigation measures you will take to minimize such impacts.

4. In § 250.1715, in the table in paragraph (a), paragraphs (a)(1) through (a)(4) are revised and paragraph (a)(10) is added to read as follows:

§ 250.1715 How must I permanently plug a well?

(a) * * *

If you have:	Then you must use:
(1) Zones in open hole	Cement plug(s) set from at least 100 feet below the bottom to 100 feet above the top of oil, gas, and fresh-water zones to isolate fluids in the strata.
(2) Open hole below casing	(i) A cement plug, set by the displacement method, at least 100 feet above and below deepest casing shoe; (ii) A cement retainer with effective back-pressure control set 50 to 100 feet above the casing shoe, and a cement plug that extends at least 100 feet below the casing shoe and at least 50 feet above the retainer; or (iii) A bridge plug set 50 feet to 100 feet above the shoe with 50 feet of cement on top of the bridge plug, for expected or known lost circulation conditions.
(3) A perforated zone that is currently open and not previously squeezed or isolated.	(i) A method to squeeze cement to all perforations; (ii) A cement plug set by the displacement method, at least 100 feet above to 100 feet below the perforated interval, or down to a casing plug, whichever is less; or (iii) If the perforated zones are isolated from the hole below, you may use any of the plugs specified in paragraphs (a)(3)(iii)(A) through (E) of this section instead of those specified in paragraphs (a)(3)(i) and (a)(3)(ii) of this section. (A) A cement retainer with effective back-pressure control set 50 to 100 feet above the top of the perforated interval, and a cement plug that extends at least 100 feet below the bottom of the perforated interval with at least 50 feet of cement above the retainer; (B) A bridge plug set 50 to 100 feet above the top of the perforated interval and at least 50 feet of cement on top of the bridge plug; (C) A cement plug at least 200 feet in length, set by the displacement method, with the bottom of the plug no more than 100 feet above the perforated interval; (D) A through-tubing basket plug set no more than 100 feet above the perforated interval with at least 50 feet of cement on top of the basket plug; or (E) A tubing plug set no more than 100 feet above the perforated interval topped with a sufficient volume of cement so as to extend at least 100 feet above the uppermost packer in the wellbore and at least 300 feet of cement in the casing annulus immediately above the packer.
(4) A casing stub where the stub end is within the casing.	(i) A cement plug set at least 100 feet above and below the stub end; (ii) A cement retainer or bridge plug set at least 50 to 100 feet above the stub end with at least 50 feet of cement on top of the retainer or bridge plug; or (iii) A cement plug at least 200 feet long with the bottom of the plug set no more than 100 feet above the stub end.
* *	* * * * *
(10) Permafrost areas	(i) A fluid to be left in the hole that has a freezing point below the temperature of the permafrost, and a treatment to inhibit corrosion; and (ii) Cement plugs designed to set before freezing and have a low heat of hydration.

* * * * *

5. The introductory text in § 250.1717, is revised to read as follows:

§ 250.1717 After I permanently plug a well, what information must I submit?

Within 30 days after you permanently plug a well, you must submit form MMS–124, Application for Permit to Modify (subsequent report), to the appropriate District Supervisor, and include the following information:

* * * * *

Temporary Abandoned Wells

6. The undesignated center heading preceding § 250.1721 is revised to read as set forth above.

§ 250.1721 [Corrected]

7. In § 250.1721, in the section heading and two places in the introductory text of § 250.1721, the word ''plug'' is revised to read ''abandon''.

§ 250.1722 [Corrected]

8. Section § 250.1722 is corrected as follows:

A. In the introductory text, the citation ''§ 250.1721(f)'' is revised to read ''§ 250.1721(f)(3)'';

B. In paragraph (c), the citation ''§ 250.1740(a)'' is revised to read '' § 250.1741(d) through (h)''; and

C. In paragraph (g), the word ''greater'' is revised to read ''less''.

§ 250.1723 [Corrected]

9. In the introductory text of § 250.1723, the words ''temporarily plugged'' are revised to read ''temporary abandoned''.

10. In § 250.1726, the introductory text is revised to read as follows:

§ 250.1726 When must I submit an initial platform removal application and what must it include?

An initial platform removal application is required only for leases and pipeline rights-of-way in the Pacific OCS Region or the Alaska OCS Region. It must include the following information:

* * * * *

§ 250.1740 [Corrected]

11. Section 250.1740 is corrected as follows:

A. Paragraph (a) is removed, paragraph (b) is redesignated paragraph (a).

B. The introductory text in newly redesignated paragraph (a) is revised, a new paragraph (b) is added, and the introductory text in paragraph (c) is revised to read as set forth below.

C. In paragraph (c)(3), the word ''District'' is revisted to read ''Regional''.

§ 250.1740 How must I verify that the site of a permanently plugged well, removed platform, or other removed facility is clear of obstructions?

* * * * *

(a) For a well site, you must either:

* * * * *

(b) For a platform or other facility site in water depths less than 300 feet, you must drag a trawl over the site.

(c) For a platform or other facility site in water depths 300 feet or more, you must either:

* * * * *

12. Section 250.1741 is corrected as follows:

A. Paragraph (b) is revised to read as set forth below.

B. In the table in paragraph (g), in paragraph (g)(3) the word ''active'' is added between the words ''diameter'' and ''pipelines'' to read ''diameter active pipelines''.

§ 250.1741 If I drag a trawl across a site, what requirements must I meet?

* * * * *

(b) You must trawl 100 percent of the limits described in paragraph (a) of this section in two directions.

* * * * *

§ 250.1743 [Corrected]

13. In § 250.1743, in paragraph (b), the word ''District'' is revised to read ''Regional''.

§§ 250.1721, 250.1722, 250.1723, 250.1743 [Corrected]

14. In addition to the corrections set forth above, remove the words ''Sundry Notices and Reports on Wells'' and add, in their place, the words ''Application for Permit to Modify'' in the following places:

A. Section 250.1721(a) and (g);

B. Section 250.1722(a) and (d);

C. Section 250.1723(b); and

D. Section 250.1743(a).

Dated: August 30, 2002.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 02–26643 Filed 10–29–02; 8:45 am]

BILLING CODE 4310–MW–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110 and 165

[CGD14–02–001]

RIN 2115–AA97

Anchorages and Security Zones; Oahu, Maui, Hawaii, and Kauai, HI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary security zones in designated waters adjacent to the islands of Oahu, Maui, Hawaii, and Kauai, HI for a period of 6 months. These security zones, which are similar to existing temporary security zones, and a related amendment to regulations for anchorage grounds in Mamala Bay, are necessary to protect personnel, vessels, and facilities from acts of sabotage or other subversive acts, accidents, or other causes of a similar nature during operations and will extend from the surface of the water to the ocean floor. Entry into the zones is prohibited unless authorized by the Coast Guard Captain of the Port Honolulu, HI.

DATES: This rule is effective from 4 p.m. HST October 19, 2002, until 4 p.m. HST April 19, 2003.

ADDRESSES: Coast Guard Marine Safety Office Honolulu maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are available for inspection or copying at Coast Guard Marine Safety Office Honolulu, 433 Ala Moana Blvd., Honolulu, Hawaii 96813, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG E. G. Cantwell, Coast Guard Marine Safety Office Honolulu, Hawaii at (808) 522–8260.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 3, 2002, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled ''Anchorages and Security Zones; Oahu, Maui, Hawaii, and Kauai, HI'' in the **Federal Register** (67 FR 56245). The Coast Guard proposed to extend the effective period for designated security zones in the waters adjacent to the islands of Oahu, Maui, Hawaii, and Kauai, HI for a period of 6 months. In addition to extending the period of security zones, we also proposed giving

names to security zones and make a few editorial, non-substantive changes. While we have changed the temporary section number, this temporary final rule effectively extends the temporary security zones established under 33 CFR 165.T14–069.

We also proposed to amend an anchorage grounds regulation by adding the requirement that permission of the Captain of the Port be obtained before entering anchorage grounds in Mamala Bay.

We received one letter of comment for the proposed rule. No public hearing was requested or held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the change in effective period would be contrary to the public interest since there is a continuing immediate need to protect persons, vessels, and facilities in the various areas on the islands of Oahu, Maui, Hawaii, and Kauai, HI. Under these circumstances, following the normal rulemaking procedures would be impracticable.

Background and Purpose

Terrorist attacks in New York City, New York, and on the Pentagon Building in Arlington, Virginia, on September 11, 2001, have called for the implementation of additional measures to protect national security. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated. This rule is similar to a rule published April 29, 2002, (67 FR 20907) creating security zones in these areas until 4 p.m. October 19, 2002.

Discussion of Comments and Changes

The Coast Guard received one comment following the publication of the notice of proposed rulemaking (67 FR 56245). The commenter addressed four issues as follows.

The first issue revolved around a discussion on the requirements for recreational, commercial fishing and commercial tourism vessels to request permission to transit the various security zones. The commenter indicated that the requirement is burdensome for vessel operators that are not required to carry a VHF–FM marine radio. These vessel operators are unable to contact the Captain of the Port via radio to request permission to transit a security zone and they are unable to hear the Broadcast Notice to Mariners announcing the status of the temporary zones.

The Coast Guard understands that all vessels are not required to carry a VHF–FM marine radio. For those vessels, operators have the option to contact the Coast Guard via telephone. While the Broadcast Notice to Mariners are only transmitted over the VHF–FM marine radio, if a vessel operator calls the Coast Guard on the telephone, they will be able to find out the status of the security zones. Additionally, all Broadcast Notice to Mariners may be viewed on the U.S. Coast Guard Navigation Center Web site at *http://www.navcen.uscg.gov/lnm/d14.* Therefore, the Coast Guard does not agree that the requirement is too burdensome.

The second issue concerns the possible impact of the rule on Small Entities and is discussed in the *Small Entities* section below.

The third issue revolved around the language used to define the security zones around cruise vessels anchored off of Lahaina and Kailua-Kona Harbors. The commenter recommended that wording in paragraph (a)(8) of the security zone temporary section be amended to read that cruise vessels will be anchored in ''designated anchorage areas.'' The commenter also recommended clarification to current wording, which suggests that cruise vessels are actually anchored ''in'' the referenced Small Boat Harbors.

There are no federally designated anchorages off of Lahaina and Kailua-Kona Harbors. Therefore, any reference to ''designated anchorages'' within the text of the rule would be inappropriate and thus no change to this wording is warranted. However, the Coast Guard agrees that the wording in paragraph (a)(8) of our new § 165.T14–072 should be clarified to reference cruise vessels anchored ''in the vicinity'' of Lahaina and Kailua-Kona Harbors, versus cruise vessel ''in'' these harbors. And we have done so.

The final issue included a request that all the security zones be depicted on nautical charts. The commenter felt that this would improve awareness of and compliance with security zones regulations.

The Coast Guard has considered these comments about publishing the zones on nautical charts and has determined that, due to the temporary nature of the security zones, no change to the proposed rule is required.

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 rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the short duration of the zone and the limited geographic zone affected by it.

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. No small business impacts are anticipated due to the small size of the zones and the short duration of the security zones in any one area.

The one commenter was concerned that the small vessel operators lacking VHF–FM marine radios might be impeded in transiting security zones. Therefore, the commenter felt that this might constitute an economic impact on Small Entities. The commenter stated that ''Should requirements of the Security Zones prohibit, or unreasonably impeded these vessels from gaining access to the ocean (and returning), it appears that there would be sufficient cause to consider a full Regulatory Evaluation and reexamination of the position taken by the Coast Guard on the 'Small Entities' section.''

The Coast Guard does not believe that any small entities will be significantly impacted by the security zones in this rule. Nearly identical security zones have been in place for more that a year and the Captain of the Port has not received any information regarding negative impacts on small entities or small vessel operators. Furthermore, no comments on this rulemaking were received from any small entities or small vessel operators regarding adverse effects of the zones.

Assistance for Small Entities

Because we did not anticipate any small business impacts, we did not offer assistance to small entities in understanding the rule.

Collection of Information

This rule would call 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 would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

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

For the reasons set out in the preamble, the Coast Guard amends 33 CFR parts 110 and 165 as follows:

PART 110—ANCHORAGE REGULATIONS

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

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. From 4 p.m. HST October 19, 2002, until 4 p.m. HST April 19, 2003, in § 110.235, add a new paragraph (c) to read as follows:

§ 110.235 Pacific Ocean (Mamala Bay), Honolulu Harbor, Hawaii (Datum: NAD 83).

* * * * *

(c) Before entering in the anchorage grounds in this section you must first obtain permission from the Captain of the Port Honolulu.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

4. Add temporary § 165.T14–072 to read as follows:

§ 165.T14–072 Security Zones; Oahu, Maui, Hawaii, and Kauai, HI.

(a) *Location.* The following areas, from the surface of the water to the ocean floor, are security zones—

(1) *Honolulu Harbor.* All waters of Honolulu Harbor and entrance channel, Keehi Lagoon, and General Anchorages A, B, C, and D as defined in 33 CFR 110.235 that are shoreward of a line connecting the following coordinates: A point on the shoreline at 21°17.68′ N, 157°52.0′ W; thence due south to 21°16.0′ N, 157°52.0′ W, thence due west to 21°16.0′ N, 157°55.58′ W, and thence due north to Honolulu International Airport Reef Runway at 21°18.25′ N, 157°55.58′ W.

(2) *Tesoro Single Point Mooring.* The waters around the Tesoro Single Point Mooring extending 1,000 yards in all directions from position 21°16.2′ N, 158°05.3′ W.

(3) *Chevron Conventional Buoy Mooring.* The waters extending 1,000 yards in all directions around vessels moored at the Chevron Conventional Buoy Mooring at approximate position 21°16.7′ N, 158°04.2′ W.

(4) *Kahului Harbor and Entrance Channel, Maui, HI.* All waters in the Kahului Harbor and Entrance Channel, Maui, HI, shoreward of the COLREGS DEMARCATION line defined in 33 CFR 80.1460.

(5) *Nawiliwili Harbor, Kauai, HI.* All waters within the Nawiliwili Harbor, Kauai, HI shoreward of the COLREGS DEMARCATION line defined in 33 CFR 80.1450.

(6) *Port Allen Harbor, Kauai, HI.* All waters of Port Allen Harbor, Kauai, HI shoreward of the COLREGS DEMARCATION line defined in 33 CFR 80.1440.

(7) *Hilo Harbor and Entrance Channel, Hawaii, HI.* All waters in Hilo Harbor and Entrance Channel, Hawaii, HI shoreward of the COLREGS

DEMARCATION line defined in 33 CFR 80.1480.

(8) *Area Around Cruise Ships in the vicinity of Lahaina Small Boat Harbor, Maui, and Kailua-Kona Small Boat Harbor, Hawaii.* The waters extending out 500 yards in all directions from cruise ship vessels anchored within 3 miles of:

(i) Lahaina Small Boat Harbor, Maui, between Makila Point and Puunoa Point.

(ii) Kailua-Kona Small Boat Harbor, Hawaii, between Keahulolu Point and Puapuaa Point.

(9) *Barbers Point Harbor, Oahu.* All waters contained within the Barbers Point Harbor, Oahu, enclosed by a line drawn between Harbor Entrance Channel Light 6 and the jetty point day beacon at 21°19.5′ N, 158°07.3′ W.

(b) *Designated representative.* A designated representative of the Captain of the Port is any Coast Guard commissioned officer, warrant or petty officer that has been authorized by the Captain of the Port Honolulu to act on his behalf. The following officers have or will be designated by the Captain of the Port Honolulu: The senior Coast Guard boarding officer on each vessel enforcing the security zone.

(c) *Regulations.* (1) In accordance with § 165.33, entry into these zones is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu or his designated representatives. Section 165.33 also contains other general requirements.

(2) The existence or status of the temporary security zones in this section will be announced periodically by Broadcast Notice to Mariners.

(3) Persons desiring to transit the areas of the security zones may contact the Captain of the Port at command center telephone number (808) 541–2477 or on VHF channel 16 (156.8 Mhz) to seek permission to transit the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his designated representatives.

(d) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section is 33 U.S.C. 1226; 49 CFR 1.46.

(e) *Effective period.* This section is effective from 4 p.m. HST October 19, 2002, until 4 p.m. HST April 19, 2003.

Dated: October 11, 2002.

R.D. Utley,

Rear Admiral, U.S. Coast Guard, Commander, Fourteenth Coast Guard District.

[FR Doc. 02–27606 Filed 10–25–02; 4:05 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–101]

RIN 2115–AE47

Drawbridge Operation Regulations: Dorchester Bay, MA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard has changed the drawbridge operation regulations that govern the operation of the William T. Morrisey Boulevard Bridge, mile 0.0, across Dorchester Bay at Boston, Massachusetts. This final rule will allow the bridge to remain in the closed position from November 1, 2002, through May 10, 2003. This action is necessary to facilitate rehabilitation construction at the bridge.

DATES: This rule is effective November 1, 2002, through May 10, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–02–101) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory Information

Pursuant to 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this final rule effective in less than 30 days after publication in the **Federal Register**. Any delay encountered in this regulation's effective date would be unnecessary and contrary to the public interest because the rehabilitation construction is necessary in order to assure continued reliable operation of the bridge.

On September 3, 2002, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Dorchester Bay, Massachusetts, in the **Federal Register** (67 FR 56247). We received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Background and Purpose

The William T. Morrisey Boulevard Bridge, at mile 0.0, across Dorchester Bay has a vertical clearance of 12 feet at mean high water and 22 feet at mean low water. The existing regulations at 33 CFR 117.597 require the draw to open on signal from April 16 through October 14; except that, the draw need not open for vessel traffic from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m. except on Saturdays, Sundays, or holidays observed in the locality. From October 15 through April 15, the draw shall open on signal if at least twenty-four hours notice is given.

The bridge owner, the Metropolitan District Commission (MDC), asked the Coast Guard to temporarily change the drawbridge operation regulations to allow the bridge to remain in the closed position from November 1, 2002 through May 10, 2003, to facilitate rehabilitation construction at the bridge. The bridge owner and the Coast Guard contacted all known waterway users to advise them of the proposed closure. No objections or negative comments were received in response to this proposal.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking and as a result, no changes have been made to this final rule.

Regulatory Evaluation

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

This conclusion is based on the fact that the only marine facility effected by this final rule has agreed to the closure dates for the bridge.

Small Entities

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

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

This conclusion is based on the fact that the only marine facility effected by this final rule has agreed to the closure dates for the bridge.

Assistance for Small Entities

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

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 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 concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have 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 (32)(e), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.597 [Suspended]

2. From November 1, 2002 through May 10, 2003, § 117.597 is suspended.

3. From November 1, 2002 through May 10, 2003, § 117.T602 is temporarily added to read as follows:

§ 117.T602 Dorchester Bay.

The draw of the William T. Morrisey Boulevard Bridge, mile 0.0, at Boston, need not open for the passage of vessel traffic.

Dated: October 17, 2002.

V.S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–27530 Filed 10–29–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–117]

Drawbridge Operation Regulations: Hackensack River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the NJTRO HX Bridge, mile 7.7, across the Hackensack River at Secaucus, New Jersey.

This temporary deviation will allow the bridge to remain closed to navigation for four weekends beginning October 19, 2002, and ending on November 10, 2002. This temporary deviation is necessary to facilitate maintenance at the bridge.

DATES: This deviation is effective from October 19, 2002, through November 10, 2002.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The bridge owner, New Jersey Transit (NJTRO), requested a temporary deviation from the drawbridge operating regulations to facilitate necessary maintenance, replacement of the timber system, at the bridge. The installation of the timber system require the bridge to remain in the closed position.

Under this temporary deviation the NJTRO HX Bridge may remain closed to vessel traffic for four weekends; October 19 & 20, October 26 & 27, November 2 & 3, and November 9 & 10, 2002. The closures will be in effect from 6 a.m. on Saturday through 6 p.m. on Sunday for each of the above weekends. The bridge shall open in emergency situations in accordance with the provisions listed in 33 CFR 117.31(b).

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: October 18, 2002.

V.S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–27529 Filed 10–29–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–523]

RIN 2115–AA97

Security Zones; Captain of the Port Detroit Zone, Selfridge Air National Guard Base, Lake St. Clair

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the permanent security zone on the navigable waters of Lake St. Clair around the Selfridge Air National Guard Base. This security zone is no longer necessary to protect the Selfridge Army National Guard Base from possible acts of terrorism. This security zone will no longer restrict vessel traffic from areas of Lake St. Clair in the vicinity of Selfridge Army National Guard Base.

DATES: This rule is effective on October 30, 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 CGD09–02–523 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office, 110 Mt. Elliott Ave, Detroit, Michigan between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. The telephone number is (313) 568–9580.

FOR FURTHER INFORMATION CONTACT: LTJG Brandon Sullivan, U.S. Coast Guard Marine Safety Office Detroit, at (313) 568–9580.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 11, 2002, we published a notice of proposed rulemaking (NPRM) entitled ''Security Zone; Captain of the Port Detroit Zone, Selfridge Army National Guard Base, Lake St. Clair'' in the **Federal Register** (67 FR 17667). Following that on June 7, 2002, we published a final rule with the same title in the **Federal Register** (67 FR 39294). We also published a correction to the final rule with same title in the **Federal Register** updating the section numbers (67 FR 47299, July 18, 2002). We received no letters commenting on either the proposed, final, or correction to the final rule. No public hearing was requested, and none was held.

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**. In response to the terrorist's attacks on September 11, 2001, the Coast Guard implemented security zones around critical facilities throughout the U.S. One such facility was the Selfridge Army National Guard Base. This security zone was established at the request of Commander, Selfridge Air National Guard Base. Due to recent improvements and additions to base security, Commander, Selfridge Air National Guard Base has indicated that the security zone is no longer necessary. As such, the Coast Guard is removing this security zone and thereby reducing the restriction placed on the public of not having access to this portion of Lake St. Clair.

Background and Purpose

On September 11, 2001, the United States was the target of coordinated attacks by international terrorists resulting in catastrophic loss of life, the destruction of the World Trade Center, and significant damage to the Pentagon. National security and intelligence officials warn that future terrorists attacks are likely. To protect from such, we published a NPRM followed by a final rule to establish a permanent security zone off the waters of Selfridge Army National Guard Base in Harrison Township, Michigan.

This security zone was believed to be necessary to ensure the protection of the public, facilities, and the surrounding area from possible sabotage or other subversive acts. All persons other than those approved by the Captain of the Port Detroit, or his authorized representative, were prohibited from entering or moving within this zone. In addition to publication in the **Federal Register**, the public was made aware of the existence of this security zone, exact location and the restrictions involved via the Broadcast Notice to Mariners.

Due to recent improvements and enhancements to base security at Selfridge Air National Guard base, the Commanding Officer of that base no longer believes the security zone is necessary. The security zone provided the necessary barrier while the base improved its security, but now that such improvements have been completed, adequate security can be provided by security personnel. As the request by the U.S. Army Garrison Commander was the primary factor for establishment of the security zone and this justification no longer exists, Captain of the Port Detroit is removing this security zone. The U.S. Army Garrison Commander concurs with the COTP decision.

Discussion of Final Rule

This final rule will remove the security zone from the waters of Lake St. Clair off Selfridge National Guard Base.

Regulatory Evaluation

This Final Rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has exempted it from review under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this final 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 final rule would 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), we want to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the office listed in **ADDRESSES** in this preamble. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Civil Justice Reform

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this final 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.

Environment

We have considered the environmental impact of this final rule and concluded that, under figure 2–1, paragraph (34) (g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation.

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

§ 165.908 [Removed]

2. Remove § 165.908.

Dated: October 21, 2002.

P.G. Gerrity,

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

[FR Doc. 02–27609 Filed 10–29–02; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 111

Metal Strapping Materials on Pallets

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule revises the standards for securing pallets of mail, whether an individual pallet of mail, a pallet composed of several individual pallets stacked to form a single unit, or a pallet with a pallet box containing mail, by excluding the use of metal strapping or metal banding material. These revisions will also exclude metal buckles, seals, or other devices used to secure the ends of nonmetal strapping material used on pallets of mail. These revisions will not change current approved methods or other materials for securing the mail to pallets.

EFFECTIVE DATE: May 31, 2003.

FOR FURTHER INFORMATION CONTACT: O.B. Akinwole, (703) 292–3643.

SUPPLEMENTARY INFORMATION: On July 24, 2002, the Postal Service published for public comment in the **Federal Register** a proposed rule (FR 67 48425–48426) that excluded the use of metal strapping or metal banding material to secure pallets of mail, whether an individual pallet of mail, a pallet composed of several individual pallets stacked to form a single unit, or a pallet with a pallet box containing mail. The Postal Service also invited comments on the proposed rule from interested

parties and accepted comments until August 23, 2002. This final rule contains the DMM standards adopted by the Postal Service after review of the comment that was submitted.

Evaluation of Comments Received

The Postal Service received one piece of correspondence offering comments on the July 24 proposed rule. The respondent is a large business mailer.

Based on additional costs expected to be incurred, due to stock on hand, the mailer proposed a December 31, 2003, implementation date.

Metal straps, bands, buckles, or seals used to secure the ends of other nonmetal strapping material, can create serious safety hazards to personnel and equipment preparing, processing and distributing the mail. In addition, the accumulation and disposal of metal strapping materials can create additional hazardous situations and environmental concerns. It should be noted that current Postal Service standards for packaging mail prohibit the use of metal or wire for securing mail into packages, and the standards for traying mail specify the use of plastic straps for securing tray sleeves and lids.

The Postal Service is committed to integrating safety into all postal operations, not only for its employees but also for its customers. Serious injuries, such as deep cuts, can occur when metal bands are applied, often when removed. In addition, the Postal Service is committed to conservation initiatives and supports environmentally sound practices. In keeping with these two commitments, the Postal Service believes that eliminating the use of metal straps or on palletized mail will improve employee and customer safety and promote better resource conservation.

The *Domestic Mail* Manual is revised as follows. These changes are incorporated by reference in the Code of Federal Regulations. *See* 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

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

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

2. Revise the following sections of the Domestic Mail Manual (DMM) as set forth below:

Domestic Mail Manual (DMM)

* * * * *

M Mail Preparation and Sortation

M000 General Preparation Standards

* * * * *

M040 Pallets

M041 General Standards

* * * * *

1.0 PHYSICAL CHARACTERISTICS

* * * * *

1.3 Securing Pallets

[Revise 1.3 to read as follows:]

Except for stacked pallets under 3.1 and pallet boxes under 4.3, each loaded pallet of mail must be prepared to maintain the integrity of the mail and the entire pallet load during transport and handling using one of the following methods:

a. Securing with at least two straps or bands of appropriate material. Wire or metal bands, straps, buckles, seals, and similar metal fastening devices may not be used.

b. Wrapping with stretchable or shrinkable plastic.

c. Securing with at least two straps or bands of appropriate material and wrapping with stretchable or shrinkable plastic. Wire and metal bands and straps, metal buckles, metal seals, and similar metal fastening devices may not be used.

* * * * *

3.0 STACKING PALLETS

[Revise the heading of 3.1 and the text of item d to read as follows:]

3.1 Physical Characteristics

* * * * *

d. The stack of pallets is secured with at least two straps or bands of appropriate material to maintain the integrity of the stacked pallets during transport and handling. Wire or metal bands, straps, buckles, seals, and similar metal fastening devices may not be used. The stack of pallets may not be secured together with stretchable or shrinkable plastic.

* * * * *

4.0 PALLET BOXES

* * * * *

4.3 Securing

[Revise 4.3 to read as follows:]

Pallet boxes must be secured to the pallet with strapping, banding, stretchable, plastic, shrinkwrap, other material (Wire or metal bands, straps, buckles, seals, and similar metal fastening devices may not be used) that ensures that the pallet can be safely unloaded from vehicles, transported, and processed as a single unit to the point where the contents are distributed with the load intact if: * * *

* * * * *

An appropriate amendment to 39 CFR 111 will be published to reflect the changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–27499 Filed 10–29–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC 104–200239(a); FRL–7400–4]

Approval and Promulgation of Implementation Plans; North Carolina: Approval of Revisions to Inspection and Maintenance (I/M) Regulations Within the North Carolina State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On August 7, 2002, the North Carolina Department of Environment and Natural Resources submitted revisions to the North Carolina State Implementation Plan (SIP). These revisions are contained within 15A NCAC 2D .1000 Motor Vehicle Emissions Control Standards. North Carolina has submitted these rules for an enhanced inspection and maintenance (I/M) program which is a component of the State's Nitrogen Oxides (NO_X) Budget and Allowance Trading Program. The I/M program establishes reductions which are being utilized by the State as part of their NO_X SIP budget. Approval of these I/M rules allow North Carolina to gain credits ranging from 914 tons in 2004 to 4,385 credits in 2007. These credits are then used to determine the number of credits that will be made available for new growth in North Carolina. This submittal resolves all outstanding issues and allows for EPA's final approval of the State's NO_X Budget and Allowance Trading Program. The final approval of the North Carolina NO_X Budget and Allowance Trading Program, which was proposed for approval in 67 FR 42519 and received no adverse comments, will be processed in a later action. The EPA is approving these revisions.

DATES: This direct final rule is effective December 30, 2002 without further notice, unless EPA receives adverse

comment by November 29, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Randy Terry at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Randy Terry, 404/562–9032. North Carolina Department of Environment, Health, and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604.

FOR FURTHER INFORMATION CONTACT: Randy B. Terry, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9032. Mr. Terry can also be reached via electronic mail at *terry.randy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 2002, the North Carolina Department of Environment and Natural Resources submitted revisions to the North Carolina SIP. These revisions involve the amending of multiple rules within Section 15A NCAC 2D .1000 Motor Vehicle Emissions Control Standards to establish an enhanced I/M program. An analysis of each of the major revisions submitted is listed below.

II. Analysis of State's Submittal

15A NCAC 2D

.1001 Purpose

This rule has been amended to change ''vehicle exhaust emission standard'' to ''vehicle emission control standard.''

.1002 Applicability This rule is being amended to replace the list of nine counties where tailpipe testing is currently required with a reference to the North Carolina General Statutes that lists the counties covered under the I/M program.

.1004 Tailpipe Emission Standards for CO (Carbon Monoxide) and HC (Hydrocarbon)

This rule is being amended to list the nine counties covered under the tailpipe testing program, to reference the tailpipe testing procedures and to state that the requirements of this Rule expire on January 1, 2006.

.1005 On-board Diagnostic Standards

This rule is being amended to specify that 1996 and later modeled-year vehicles are to be inspected using On Board Diagnostics (OBD) test. The federal procedures are incorporated by reference.

Approval of these I/M rules allow North Carolina to gain credits ranging from 914 tons in 2004 to 4,385 credits in 2007. These credits are then used to determine the number of credits that will be made available for new growth in North Carolina. The total credits obtained from these I/M rules and the credits allocated for new growth are detailed in the North Carolina Nitrogen Oxides (NO_X) Budget and Allowance Trading Program **Federal Register** proposal notice (67 FR 42519).

III. Final Action

EPA is approving the aforementioned changes to the SIP because the revisions are consistent with Clean Air Act and EPA regulatory requirements. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective December 30, 2002 without further notice unless the Agency receives adverse comments by November 29, 2002.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 30, 2002 and no further action will be taken on the proposed rule.

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

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 (Pub. L. 104–4).

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

Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

The Congressional Review Act, 5 U.S.C. 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 December 30, 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, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 21, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart II—North Carolina

2. In § 52.1770(c), table 1 is amended under subchapter 2D by revising entries .1001; .1002; .1004; and .1005 to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

TABLE 1.—EPA APPROVED NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Comments
Subchapter 2D	Air Pollution Control Requirements			
* *	*	*	* *	*
Section .1000	Motor Vehicle Emissions Control Standards			
Sect. .1001	Purpose	7/01/02	10/30/02 and FR page citation.	
Sect. .1002	Applicability	7/01/02	10/30/02 and FR page citation.	
* *	*	*	* *	*
Sect. .1004	Emission Standards	7/01/02	10/30/02 and FR page citation.	
Sect. .1005	Measurement and Enforcement	7/01/02	10/30/02 and FR page citation.	
* *	*	*	* *	*

[FR Doc. 02–27495 Filed 10–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 165–1165a; FRL–7401–4]

Approval and Promulgation of Implementation Plans; State of KS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking final action to approve a volatile organic compound (VOC) rule applicable to the Kansas portion of the Kansas City maintenance area as a revision to the Kansas State Implementation Plan (SIP). This rule restricts VOC emissions from area sources. The effect of this approval is to ensure Federal enforceability of the state air program rules and to maintain consistency between the state-adopted rules and the approved SIP. This action also determines that Kansas has met the condition of approval of its revised maintenance plan for Kansas City and rescinds the prior conditional approval of the revised maintenance plan.

DATES: This direct final rule will be effective December 30, 2002, unless EPA receives adverse comments by November 29, 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: Comments may be mailed to Leland Daniels, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Leland Daniels at (913) 551–7651.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is being addressed in this document?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

Kansas has adopted a regulation to control emission of VOCs from area sources located within the Kansas portion of the Kansas City ozone maintenance area, specifically Johnson and Wyandotte Counties. The rule we are approving is the Kansas Administrative Rule (K.A.R.) 28–19–714, Control of Emissions from Solvent Metal Cleaning. Kansas, in a continuing effort to achieve additional needed emission reductions, has adopted this control regulation. Implementation of this rule is expected to reduce VOC emissions from area sources by 1.97 tons per day (tpd). This new regulation was adopted by the Kansas Department of Health and Environment (KDHE) on July 29, 2002, and became effective September 1, 2002. Today, EPA is taking final action to approve the rule K.A.R. 28–19–714, Control of Emissions from Solvent Metal Cleaning.

In 1999 we conditionally approved (64 FR 28757, May 27, 1999) the new contingency measures in the maintenance plan and gave the State one year to opt-in to the reformulated gasoline (RFG) program or adopt equivalent emission reduction measures. By letter dated July 28, 1999, the Governor of Kansas filed an application to require RFG for the Kansas City, Kansas, area. The State's action to opt-in to the RFG program fulfilled the condition we imposed upon the approval. Before EPA acted on the application to impose RFG, the Court of Appeals for the District of Columbia Circuit first stayed and later vacated an EPA rule which would have allowed former nonattainment areas (like Kansas City) and other areas to opt-in to the RFG program (*American Petroleum Inst.* v. *U.S. Environmental Protection Agency,* 198 F. 3d 275 (D.C. Cir. 2000)). Subsequently, the State chose to implement a lower volatility gasoline measure (7.0 psi RVP). This measure was approved on February 13, 2002 (67 FR 6655, effective March 15, 2002).

Kansas has worked to establish control measures to provide the additional emissions reductions needed to fulfill the contingency measure requirement. In addition, during 2001 Missouri submitted four additional control measures to limit VOC emissions.

For these reasons, we are determining that Kansas has met the condition of the May 27, 1999, approval of the maintenance plan revision (64 FR 28757), and we are rescinding the prior conditional approval (40 CFR 52.869) and providing full approval of the revision to the maintenance plan.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

This action approves a VOC rule, K.A.R. 28–19–714, as a revision to Kansas's SIP for the Kansas City, Kansas, area. We are also revoking K.A.R. 28–19–75 as it has been revised and replaced. This action also provides full approval of the revision to the maintenance plan and also removes the prior conditional approval (40 CFR 52.869). We are processing this action as a final action because it adds noncontroversial regulations to the SIP. We do not anticipate any adverse comments. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision is 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.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the 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. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 30, 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 18, 2002.

William Rice,

Acting Regional Administrator, Region 7.

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 R—Kansas

§ 52.869 [Removed and Reserved]

2. Section 52.869 is removed and reserved.

3. Section 52.870 is amended in the table to paragraph (c) under Volatile Organic Compound Emissions by:

a. Removing the entry for K.A.R. 28–19–75; and

b. Adding in numerical order an entry for ''28–19–714,'' to read as follows:

§ 52.870 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED KANSAS REGULATIONS

Kansas citation	Title	State effective date	EPA approval date	Comments
Kansas Department of Health and Environment Ambient Air Quality Standards and Air Pollution Control				
*	*	*	*	*
Volatile Organic Compound Emissions				
*	*	*	*	*
28–19–714	Control of Emissions from Solvent Metal Cleaning	9/1/02	10/30/02 [FR page citation]	

EPA-APPROVED KANSAS REGULATIONS—Continued

Kansas citation	Title	State effective date	EPA approval date	Comments
*	*	*	*	*

* * * * *

[FR Doc. 02–27492 Filed 10–29–02; 8:45 am]

BILLING CODE 6560–50–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 1230

New Restrictions on Lobbying

CFR Correction

In Title 45 of the Code of Federal Regulations, part 1200 to end, revised as of October 1, 2001, Appendix B to part 1230 is correctly revised to read as follows:

Appendix B to Part 1230—Disclosure Form to Report Lobbying

APPENDIX B TO PART 1230—DISCLOSURE FORM TO REPORT LOBBYING

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known*:
Congressional District, *if known*:

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
Congressional District, *if known*:

6. Federal Department/Agency:

7. Federal Program Name/Description:
CFDA Number, *if applicable*: _____

8. Federal Action Number, *if known*:

9. Award Amount, *if known*:
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply)*:
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply)*:
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

Federal Use Only:

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Standard Form - LLL-A

[FR Doc. 02–55525 Filed 10–29–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10, 12, and 15

[USCG–1999–5610]

RIN 2115–AF83

Training and Qualifications for Personnel on Passenger Ships

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is establishing requirements of training and certification for masters, certain licensed officers, and certain crewmembers on any ship inspected under subchapter H, T, or K, other than a roll-on/roll-off (Ro-Ro) passenger ship, carrying more than 12 passengers when on an international voyage. (These requirements do not apply to any passenger ship when it is on a domestic voyage.) Regulation V/3 of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), as amended in 1997, mandated that its Parties ensure this training and certification. This interim rule will reduce human error, improve the ability of crewmembers to assist passengers during emergencies, and promote safety.

DATES: This interim rule is effective January 28, 2003. Comments and related material must reach the Docket Management Facility on or before December 30, 2002.

The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register, and effective January 28, 2003.

ADDRESSES: To make sure that your comments and related material do not enter the docket more than once, please submit them (referred to USCG–1999–5610) by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of

Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, call Mark Gould, Project Manager, Commandant (G–MSO–1), Coast Guard, telephone 202–267–6890. For questions on viewing the docket, call Dorothy Beard, Chief of Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–1999–5610), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

Public Meeting

We do not plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory History

On June 15, 2000, we published a notice of proposed rulemaking (NPRM) entitled ''Training and Certification for Mariners Serving on Certain Ships Carrying More Than 12 Passengers on International Voyages'' in the **Federal Register** [65 FR 37507]. We received two letters commenting on the proposed rule. No public hearing was requested, and none was held. Also on June 15, 2000, we published an Analysis and a Determination of Categorical Exclusion, both of which support the rule.

Background and Purpose

Regulation V/3 of the STCW, as amended, set qualifications for masters, other officers, ratings, and other personnel on passenger ships other than Ro-Ro passenger ships. It applies to a passenger ship (''vessel'' under most domestic laws) when it is on an international voyage. This interim rule will not apply to any U.S.-flag passenger ship inspected under 46 CFR subchapter H, T, or K, when it is operating on a domestic voyage.

The purpose of this rule is to incorporate, into domestic rules, the training and certification that the STCW, as amended, mandates internationally. It will amend requirements for the training and certification of masters, certain licensed officers, and certain crewmembers on any ship, other than a Ro-Ro passenger ship, carrying more than 12 passengers when on an international voyage. It will have no impact on the applicability or content of the interim rule in 46 CFR part 10, subpart J; part 12, subpart 12.30; or part 15, subpart J (62 FR 34505, June 26, 1997), all three of which dealt with certain crewmembers on Ro-Ro passenger ships carrying more than 12 passengers on such voyages. It will merely establish appropriate training and documentation for the masters, certain licensed officers, and certain crewmembers on any other ship carrying more than 12 passengers when on an international voyage. ''International voyage'' means a voyage from the United States to a port outside the United States or conversely; or a voyage originating and terminating at ports outside the United States. A voyage between the continental United States and Hawaii or Alaska, and a voyage between Hawaii and Alaska, counts as a ''international voyage'' for the purposes of this rule (compare 46 CFR 199.30 on lifesaving).

If you would like more information on the background of this rulemaking and of the STCW, please refer to the NPRM discussed earlier under *Regulatory History*.

Discussion of Interim Rule

46 CFR Part 10—Licensing of Maritime Personnel

1. Section 10.102 incorporates by reference the STCW (including its Regulation V/3, adopted in 1997, and the corresponding Code) into the rules in part 10 and adjusts the list of rules that refer to the STCW, as amended.

2. Section 10.103 amends the definition of ''STCW'' to add the words ''and 1997 (incorporated by reference in § 10.102)''. For continuity, sections 10.205, 10.304, 10.603, 10.901, 10.903, and 10.1005, where STCW or the STCW Code is cited, add the same parenthetic statement.

3. New sections 10.1101, 10.1103, and 10.1105 require certain licensed officers to complete training required by the STCW Regulation V/3 (and elaborated by section A–V/3 of the Code) when serving on a ship, other than a Ro-Ro passenger ship, carrying more than 12 passengers when on an international voyage.

46 CFR Part 12—Certification of Seamen

4. Section 12.01–3 incorporates by reference the STCW (including its Regulation V/3, adopted in 1997, and the corresponding Code) into the rules in part 12 and adjusts the list of rules that refer to the STCW, as amended.

5. Section 12.01–6 amends the definition of ''STCW'' to add the words ''and 1997 (incorporated by reference in § 12.01–3)''. For continuity, sections 12.01–1, 12.01–6, 12.02–7, 12.02–11, 12.03–1, 12.05–3, 12.05–7, 12.05–11, 12.10–3, 12.10–5, 12.10–7, 12.10–9, 12.15–3, 12.15–7, 12.25–45, 12.30–5, and 12.35–5, where STCW or the STCW Code is cited, add the same parenthetic statement.

6. New subpart 12.35 requires certain mariners to complete training required by Regulation V/3 (and elaborated by section A–V/3 of the Code) when serving on a ship, other than a Ro-Ro passenger ship, carrying more than 12 passengers when on an international voyage. If we left the wording in § 12.35–5 of the NPRM unchanged, we

would inadvertently restrict the training to persons holding merchant mariners' documents. As reflected in the regulatory analysis supporting the NPRM, it was (and remains) our intent to have these requirements apply to all crewmembers (including undocumented deckhands), who, during emergencies, are responsible for the safety of passengers. Consequently, we have modified the wording in § 12.35–5. We are providing a 60-day comment period to allow public review of and comment on this change before we implement it.

46 CFR Part 15—Manning

7. The heading of § 15.1103 is revised so as to clearly indicate that the section also covers undocumented crewmembers. Paragraphs (e), (f), and (g) of § 15.1103 will become paragraphs (f), (g), and (h), respectively; relettered paragraph (f) will undergo no change; and the heading and relettered paragraphs (g) and (h) will undergo slight editorial change.

8. A new paragraph 15.1103(e) will govern any ship, other than a Ro-Ro passenger ship, carrying more than 12 passengers when on an international voyage. Paragraph 15.1103(d) takes on the simpler, clearer form of new paragraph 15.1103(e), without substantive change.

Discussion of Comments

We received two comments on this rulemaking. Both addressed our request in the NPRM for suggestions on whether these requirements should apply to any U.S.-flag passenger ship inspected under 46 CFR subchapter H and operating on a domestic voyage. Both stated that the requirements should not apply. Because there are so few records of casualties, they believe there is no need to impose the requirements on these vessels.

At this time, we do not intend to require any U.S.-flag passenger ship inspected under 46 CFR subchapter H, T, or K, when operating on a domestic voyage, to comply with these requirements. Should the Coast Guard find this to be necessary, a separate rulemaking would also be necessary. The training required by this rule, however, is required for masters, certain licensed officers, and certain crewmembers serving on a vessel inspected under subchapter H, as well as under subchapter T or K, if the vessel is on an international voyage.

Incorporation by Reference

This interim rule incorporates by reference the material listed in 46 CFR 10.102 and 12.01–3. Copies of the material are available from the source listed in those sections. The Coast Guard submitted this material to the Director of the Federal Register for approval of the incorporation by reference and received such approval.

Regulatory Evaluation

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

A Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is available in the docket as indicated under **ADDRESSES.** A summary of the Regulatory Evaluation follows:

The Coast Guard is publishing this interim rule to implement Regulation V/3 of the STCW, as amended in 1997. The rule specifies the necessary training and certification for certain mariners serving on any ship, other than a Ro-Ro passenger ship, carrying more than 12 passengers when on an international voyage (the interim rule on the STCW (CGD 95–062, June 26, 1997) covers Ro-Ro passenger ships). The IMO mandated that its Parties ensure this training and certification, which should reduce human error, improve the ability of crewmembers to assist passengers during emergencies, and promote safety.

Costs

The specialized training courses that certain mariners will have to complete are: Crisis Management and Human Behavior, Crowd Management, Special Safety Training (including communication), Training in Passengers' Safety, and Special Familiarization Training (including the operational limitations of the ship). The average cost for the courses, held for 5 days at various training institutions, is $1,215 a person. We estimate that the cost to develop in-house courses will not exceed the cost of courses at these institutions. Either operators of vessels or companies may develop a more cost-effective way to provide in-house training (for less than the cost we estimate). We estimate the costs of first-year training for 1,144 mariners to be $1,389,960.

Union contracts may require some companies to pay for training new hires. We estimate the cost of training for the new hires paid by the companies to be $20,655 a year beginning in 2001 and running through 2010. We estimate the cost paid by the new hires themselves after 2001 to be $117,855 a year.

Certain mariners will have to complete refresher training for Crisis Management and Human Behavior, Crowd Management, and Special Safety every five years. This training is available as a single two-day course at an estimated cost of $330. We estimate the first-year travel cost incurred by the existing staff of mariners that receive training away from their vessels at $406,850. We estimate the cost of travel for the new hires to be $45,030. We estimate that about one-half of the existing staff of mariners receiving training away from their vessels will continue to receive their wages while attending courses, because of their membership in unions. We estimate this one-time cost of wages to be $370,310. We estimate the recurring cost of wages associated with the refresher training to be $183,034 a year. We estimate the one-time cost incurred by the remaining half of the existing staff of mariners (those that don't receive wages while attending initial training) to be $370,310; this is the ''opportunity cost'' of the mariners' spare time. As with initial training, we believe that owners or operators may develop in-house refresher training at less cost than we estimate.

In summary, the 10-year present value (in 2000 dollars) of the total cost of this rule is $4,345,794. To learn further details concerning the costs associated with this rule, as well as the potential benefits, see the analysis provided in the docket for this rule on the Internet at *http://dms.dot.gov.*

Benefits

Implementing this interim rule will ensure that any U.S. ship carrying more than 12 passengers on an international voyage is in compliance with the Amendments to the International Convention on the STCW, 1978. IMO adopted the Amendments in response to a series of casualties involving passenger ships, such as the *Scandinavian Star, Estonia,* and *Achille Lauro.* During these casualties, the crews did not perform emergency duties in an efficient, coordinated, and effective manner. We reviewed the casualty records for the U.S. ships this rule will affect and found no cases that would have directly benefited from this rule. However, the following narratives briefly describe two of the casualties to these three foreign-flag ships, to show the types of risks this rule addresses.

On March 15, 1988, a fire occurred in the engine room of the *Scandinavian Star.* Two crewmembers were injured,

and two passengers were transported to a medical facility by helicopter, treated, and released. Costs of damage and repair came to about $3.5 million. According to an excerpt from the marine-accident report of the National Transportation Safety Board, one of the passengers stated that one of the crewmembers did not know how to pull the fire alarm and that the passengers waited from 45 minutes to 2 hours to receive lifejackets and then were given child-size lifejackets.

On November 30, 1994, a fire onboard the *Achille Lauro* proved more costly: It left two persons dead, and eight injured. Afterward, many of the survivors complained of confusion and a lack of leadership by the crew when the fire broke out. They accused some crewmembers of abandoning elderly passengers to save themselves.

While the requirement for all crewmembers to have familiarization or basic safety training or instruction figured in the 1995 amendments to the STCW, the amendments did not adequately address the need for special training of personnel on passenger ships. Further work was necessary at the IMO to reach agreement on the mandatory minimum training and qualifications for these personnel.

Implementing this rule should reduce the risk that passengers will be injured in fires or other emergencies on passenger ships, because crewmembers will be trained to coordinate rapid responses and keep passengers from panicking. The following recent accidents involving passenger ships highlight the continued need for this rule: the fire on the *Universe Explorer* (July 1996) near Juneau, Alaska; the fire on the *Vistafjord* (April 1997) near Grand Bahama Island; and the grounding of the *Monarch of the Seas* (December 1998) off St. Maarten.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this interim 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.

This rule will affect certain crewmembers on any ship carrying more than 12 passengers when on an international voyage. The Act, however, does not regard individual crewmembers as small entities.

This rule will not require companies to bear the cost of the training. Nonetheless, we estimate that the companies will choose to bear most of it.

During the analysis for the interim rule implementing 1995 Amendments to the STCW, we considered the impact on businesses, organizations, and jurisdictions both defined as small entities and potentially affected by the STCW. Small entities here include owners and operators of some of the STCW-affected ships, training institutions, and businesses offering marine-training courses or supplying assessors or examiners. As that rule does not, this rule will not require any single business to offer or assess all courses required under the STCW. Training institutions or businesses that offer training-course assessors will not have to provide new services. This rule will allow for small entities to remain in and actively compete in maritime training with options to teach and assess as many courses or functions as they choose.

We realize there are issues regarding the lack of approved courses and designated examiners in some remote locations. The Coast Guard will develop guidelines addressing alternative means for the delivery of such courses; these means may involve delivery of such courses on site (*i.e.*, ''in-house'' training). These courses or other training would be acceptable for officers and crewmembers on vessels inspected under subchapter H, T, or K, when authorized by the cognizant OCMI.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this interim rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule as applied to persons not holding merchant mariners' documents would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mark Gould, project manager, at 202–267–6890. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal rules, to the Small Business and Agriculture Regulatory Enforcement Ombudsman and to 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

As described in the NPRM (65 FR 37505–13) and in the Analysis Documentation (available in the docket as indicated under **ADDRESSES**), this interim rule contains three new requirements that call for collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The three take a single form: holding documentary evidence of compliance with STCW.

STCW Regulation V/3 requires certain seafarers serving on any ship (other than a Ro-Ro passenger ship) carrying more than 12 passengers when on an international voyage to complete specialized training as adopted by IMO in 1997. We didn't receive any comments regarding the collection-of-information burden of this rule.

As required by 44 U.S.C. 3507(d), we submitted a copy of this rule to OMB for its review of the collection of information. The section numbers are 46 CFR 10.1105, 12.35–5, and 15.1103, and the corresponding approval number from OMB will be OMB Control Number 2115–0624. We will publish another notice when OMB approves the collection of information. We expect approval to be valid for three years.

You need not respond to a collection of information unless it displays a currently valid control number from OMB.

Federalism

We have analyzed this interim rule under Executive Order 13132, Federalism. It is well settled that States are precluded from regulating in categories that are reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306 and 3703(a), 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels to which these sections apply) are within the field foreclosed from

regulation by States. (*See* the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke,* 120 S. Ct. 1135 (1999), 2000 U.S. LEXIS 1895 (March 6, 2000).) Because this rule falls into the above-mentioned categories, it precludes States from regulating.

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 regulatory actions not specifically required by law. 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.

While two States operate passenger vessels on international voyages, entities in the private sector own and operate most of the vessels with mariners that this interim rule will affect. More important, the total burden of Federal mandates that this rule will impose will not exceed $5 million (during the first 10 years after the effective date of the rule). Therefore, this rule will not impose an unfunded mandate. Although this rule will not result in a $100,000,000 expenditure, we do discuss its effects elsewhere in this preamble.

Taking of Private Property

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

Reform of Civil Justice

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

Indian Tribal Governments

This interim 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.

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

Energy Effects

We have analyzed this interim 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 interim rule and concluded that under figure 2–1, paragraph (34)(c), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This rule will not result in any significant cumulative impact on the human environment; any substantial controversy or substantial change to existing environmental conditions; any impact, more than minimal, on properties protected under 4(f) of the DOT Act, as superseded by Public Law 97–449 and Section 106 of the National Historic Preservation Act; or any inconsistencies with any Federal, State, or local laws or administrative determinations relating to the environment. A Determination of Categorical Exclusion is available in the docket where indicated under **ADDRESSES.**

List of Subjects

46 CFR Part 10

Incorporation by reference, Marine safety, Seamen, Vessels.

46 CFR Part 12

Incorporation by reference, Marine safety, Seamen, Vessels.

46 CFR Part 15

Marine safety, Navigation (water), Seamen, Vessel manning, Vessels.

For the reasons set out in the preamble, the Coast Guard is amending 46 CFR parts 10, 12, and 15 as follows:

PART 10—LICENSING OF MARITIME PERSONNEL

1. The citation of authority for part 10 continues to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110; 46 U.S.C. Chapter 71; 46 U.S.C. 7502, 7505, 7701; Pub. L. 103–206, 107 Stat. 2439; 49 CFR 1.45, 1.46; Sec. 10.107 also issued under the authority of 44 U.S.C. 3507.

2. Revise § 10.102(b) to read as follows:

§ 10.102 Incorporation by reference.

* * * * *

(b) The material incorporated by reference in this part and the sections affected are as follows: *International Maritime Organization (IMO),* 4 Albert Embankment, London, SE1 7SR, England. The STCW—International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended in 1995 and 1997 (the STCW Convention, or the STCW)—and Seafarers' Training, Certification and Watchkeeping Code (the STCW Code), approved for incorporation by reference in sections 10.103; 10.205; 10.304; 10.603; 10.901; 10.903; 10.1005; and 10.1105 of this part.

§ 10.103 [Amended]

3. In § 10.103, to the definition of ''STCW,'' immediately following the words ''as amended in 1995'', add the words ''and 1997 (incorporated by reference in § 10.102)''.

§ 10.205 [Amended]

4. In paragraph (l)(1) of § 10.205, immediately following the words ''STCW Code'', add the words ''(incorporated by reference in § 10.102)''; and in paragraphs (l)(2), (3), and (4) of § 10.205, immediately following the words ''STCW Code'', add the words ''(also incorporated by reference in § 10.102)''.

§ 10.304 [Amended]

5. In paragraph (f) of § 10.304, immediately following the words ''Chapter III of STCW'', add the words ''(incorporated by reference in § 10.102)''.

§ 10.603 [Amended]

6. In paragraph (c) of § 10.603, immediately following the words ''STCW Regulation IV/2'', add the words ''(incorporated by reference in § 10.102)''.

§ 10.901 [Amended]

7. In paragraph (c) of § 10.901, immediately following the words ''STCW Regulations'', add the words ''(incorporated by reference in § 10.102)''.

§ 10.903 [Amended]

8. In paragraphs (c) and (d) of § 10.903, immediately following the words ''STCW Code'', add the words ''(incorporated by reference in § 10.102)''.

§ 10.1005 [Amended]

9. In § 10.1005, immediately following the words ''STCW Code'', add the words ''(incorporated by reference in § 10.102)''.

10. Add Subpart K, consisting of §§ 10.1101 through 10.1105, to read as follows:

Subpart K—Officers on a Passenger Ship, Other Than a Ro-Ro Passenger Ship, When on an International Voyage

Sec.
10.1101 Purpose of rules.
10.1103 Definitions.
10.1105 General requirements for license holders.

Subpart K—Officers on a Passenger Ship, Other Than a Ro-Ro Passenger Ship, When on an International Voyage

§ 10.1101 Purpose of rules.

The rules in this subpart establish requirements for officers serving on passenger ships as defined in § 10.1103.

§ 10.1103 Definitions.

Passenger ship in this subpart means a ship, other than a Ro-Ro passenger ship, carrying more than 12 passengers when on an international voyage.

§ 10.1105 General requirements for license holders.

If you are licensed as a master, mate, chief mate, engineer, or chief engineer, then, before you may serve on a passenger ship, you must—

(a) Meet the appropriate requirements of the STCW Regulation V/3 and of section A–V/3 of the STCW Code (incorporated by reference in § 10.102); and

(b) Hold documentary evidence to show that you meet these requirements through approved or accepted training.

PART 12—CERTIFICATION OF SEAMEN

11. The citation of authority for part 12 continues to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7503, 7505, 7701; 49 CFR 1.46.

§ 12.01–1 [Amended]

12. In paragraph (a)(2) of § 12.01–1, immediately following the words ''required by STCW'', add the words ''(incorporated by reference in § 12.01–3)''.

§ 12.01–3 [Amended]

13. Revise § 12.01–3 to read as follows:

§ 12.01–3 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and must ensure that the material is available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC, and at the U.S. Coast Guard, Office of Operating and Environmental Standards, room 1210, 2100 Second Street SW., Washington, DC, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected, are as follows:

International Maritime Organization (IMO), 4 Albert Embankment, London, SE1 7SR, England. The STCW—International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended in 1995 and 1997 (the STCW Convention, or the STCW)—and Seafarers' Training, Certification and Watchkeeping Code (the STCW Code), approved for incorporation by reference in sections 12.01–1; 12.01–6; 12.02–7; 12.02–11; 12.03–1; 12.05–3; 12.05–7; 12.05–11; 12.10–3; 12.10–5; 12.10–7; 12.10–9; 12.15–3; 12.15–7; 12.25–45; 12.30–5; and 12.35–5 of this part.

§ 12.01–6 [Amended]

14. In § 12.01–6, to the definition of ''STCW,'' delete the words ''in 1995'', and add the parenthetic statement ''(incorporated by reference in § 12.01–3)''.

§ 12.02–7 [Amended]

15. In paragraph (d) of § 12.02–7, immediately following the words ''in accordance with STCW'', add the words ''(incorporated by reference in § 12.01–3)''.

§ 12.02–11 [Amended]

16. In paragraph (h)(1) of § 12.02–11, immediately following the words ''the STCW Code'', add the words ''(incorporated by reference in § 12.01–3)''.

§ 12.03–1 [Amended]

17. In paragraph (a)(8) of § 12.03–1, immediately following the words ''the STCW Code'', add the words ''(incorporated by reference in § 12.01–3)''.

§ 12.05–3 [Amended]

18. In paragraph (b)(1) of § 12.05–3, immediately following the words ''the STCW Code'', add the words ''(incorporated by reference in § 12.01–3)''.

§ 12.05–7 [Amended]

19. In paragraph (a)(5) of § 12.05–7, immediately following the words ''the STCW Code'', add the words ''(incorporated by reference in § 12.01–3)''.

§ 12.05–11 [Amended]

20. In paragraph (a) of § 12.05–11, remove the words ''STCW endorsement'' and replace them with the words ''endorsement under the STCW (incorporated by reference in § 12.01–3)''.

§ 12.10–3 [Amended]

21. In paragraph (c) of § 12.10–3, immediately following the words ''STCW Regulation VI/2'', add the words ''(incorporated by reference in § 12.01–3)''.

§ 12.10–5 [Amended]

22. In paragraph (d) of § 12.10–5, immediately following the words ''STCW Regulation VI/2'', add the words ''(incorporated by reference in § 12.01–3)'' and, immediately following the words ''STCW Code'', add the words ''(also incorporated by reference in § 12.01–3)''.

§ 12.10–7 [Amended]

23. In § 12.10–7, remove the words ''STCW endorsement'' and replace them with the words ''endorsement under the STCW (incorporated by reference in § 12.01–3)''.

§ 12.10–9 [Amended]

24. In paragraph (b)(2) of § 12.10–9, immediately following the words ''STCW Regulation VI/2'', add the words ''(incorporated by reference in § 12.01–3)''.

§ 12.15–3 [Amended]

25. In paragraph (d)(1) of § 12.15–3, immediately following the words ''the STCW Code'', add the words ''(incorporated by reference in § 12.01–3)''.

§ 12.15–7 [Amended]

26. In paragraph (c) of § 12.15–7, immediately following the words ''the STCW Code'', add the words ''(incorporated by reference in § 12.01–3)''.

§ 12.25–45 [Amended]

27. In § 12.25–45, immediately following the words ''the STCW Code'', add the words ''(incorporated by reference in § 12.01–3)''.

§ 12.30–5 [Amended]

28. In § 12.30–5, immediately following the words ''the STCW Code'', add the words ''(incorporated by reference in § 12.01–3)''.

29. Add new subpart 12.35, consisting of §§ 12.35–1 through 12.35–5, to read as follows:

Subpart 12.35—Crewmembers on a Passenger Ship, Other Than a Ro-Ro Passenger Ship, When on an International Voyage

Sec.
12.35–1 Purpose of rules.
12.35–3 Definition.
12.35–5 General requirements.

Subpart 12.35—Crewmembers on a Passenger Ship, Other Than a Ro-Ro Passenger Ship, When on an International Voyage

§ 12.35–1 Purpose of rules.

The rules in this subpart establish requirements for the certification of seamen serving on passenger ships as defined in § 12.35–3.

§ 12.35–3 Definition.

Passenger ship in this subpart means a ship, other than a Ro-Ro passenger ship, carrying more than 12 passengers when on an international voyage.

§ 12.35–5 General requirements.

If you are an unlicensed person, then, before you may serve on a passenger ship and perform duties that involve safety or care for passengers, you must—

(a) Meet the appropriate requirements of the STCW Regulation V/3 and of section A–V/3 of the STCW Code (incorporated by reference in § 12.01–3); and

(b) Hold documentary evidence to show that you do meet these requirements through approved or accepted training.

PART 15—MANNING REQUIREMENTS

30. The citation of authority for part 15 continues to read as follows:

Authority: 46 U.S.C. 2101, 2103, 3306, 3703, 8101, 8102, 8104, 8105, 8301, 8304, 8502, 8503, 8701, 8702, 8901, 8902, 8903, 8904, 8905(b), 9102; Pub. L. 103–206, 107 Stat. 2439; 49 CFR 1.45 and 1.46.

31. In § 15.1103, revise paragraph (d) to read as set forth below; redesignate paragraphs (e), (f), and (g) as paragraphs (f), (g), and (h), respectively; add a new paragraph (e) to read as set forth below; and revise the section heading and newly redesignated paragraphs (g) and (h) to read as follows:

§ 15.1103 Employment and service within restrictions of a license, document, and STCW endorsement or of a certificate of training.

* * * * *

(d) You must hold documentary evidence to show you meet the requirements of § 10.1005 (if licensed) or § 12.30–5 (if unlicensed) of this chapter if you are a master or crewmember on board a Ro-Ro passenger ship to which a certificate signifying compliance with the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS), has been issued.

(e) You must hold documentary evidence to show you meet the requirements of § 10.1105 (if licensed) or § 12.35–5 (if unlicensed) of this chapter if you are a master or crewmember on board a vessel that is—

(1) Subject to the STCW;

(2) Not a Ro-Ro passenger ship; and

(3) Carrying more than 12 passengers when on an international voyage.

* * * * *

(g) On board a seagoing vessel required to comply with provisions of the GMDSS in Chapter IV of SOLAS, no person may employ or engage any person to serve, and no person may serve, as the person designated to maintain GMDSS equipment at sea, when the service of a person so designated is used to meet the maintenance requirements of SOLAS Regulation IV/15, which allows for capability of at-sea electronic maintenance to ensure that radio equipment is available for radio communication, unless the person so serving holds documentary evidence that he or she is competent to maintain GMDSS equipment at sea.

(h) After January 31, 2002, on board a seagoing vessel fitted with an Automatic Radar Plotting Aid (ARPA), no person may employ or engage any person to serve, and no person may serve, as the master, chief mate, or officer of the navigational watch, unless the person so serving has been trained in the use of ARPA in accordance with § 10.205 or § 10.209 of this chapter, whichever is appropriate.

Dated: October 18, 2002.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 02–27376 Filed 10–29–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 34

Firefighting Equipment

CFR Correction

In Title 46 of the Code of Federal Regulations, Parts 1 to 40, revised as of October 1, 2001, on page 462, in § 34.50–10, paragraph (e) is revised to read as follows:

§ 34.50–10 Location—TB/ALL.

* * * * *

(e) Portable extinguishers and their stations shall be numbered in accordance with § 35.40–25 of this subchapter.

* * * * *

[FR Doc. 02–55524 Filed 10–29–02; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32, 42, 51, and 64

[WC Docket No. 02–269, FCC 02–240]

Federal-State Joint Conference on Accounting Issues

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission convenes a Federal-Station Joint Conference on Accounting Issues to provide a forum for an ongoing dialogue between the commission and the states in order to ensure that regulatory accounting data and related information filed by carriers are adequate, truthful, and thorough.

DATES: Effective October 30, 2002.

FOR FURTHER INFORMATION CONTACT: Jane Jackson, Associate Bureau Chief, Wireline Competition Bureau, at (202) 418–1500.

SUPPLEMENTARY INFORMATION: The following is a synopsis of action taken by the Commission that was adopted on August 27, 2002, and released on September 5, 2002, by the Commission: Commissioner Copps issuing a statement.

I. Introduction

In this Order, we convene a Federal-State Joint Conference on Accounting Issues to provide a forum for an ongoing dialogue between the Commission and the states in order to ensure that regulatory accounting data and related information filed by carriers are adequate, truthful, and thorough. The Federal-State Joint Conference on Accounting Issues will further this goal by facilitating cooperative federal and state review of regulatory accounting and related reporting requirements in order to determine their adequacy and effectiveness in the current market and make recommendations for improvements.

II. Background

Section 11 of the Communications Act requires that the Commission review every two years those regulations that are ''no longer necessary in the public interest as the result of meaningful economic competition between providers of telecommunications service.'' To this end, in the *Phase II Accounting Reform* proceeding, the Commission undertook its second comprehensive, biennial review of its Part 32 accounting rules and Automated Reporting Management Information System (ARMIS) reporting requirements. As part of this review, the Commission adopted changes to its accounting and related reporting rules that were intended to ''reflect a sharpened focus on ongoing regulatory needs in the areas of competition and universal service[,]'' and minimize the regulatory burdens and distortions that could undermine the development of new technology. In addition, in a related Further Notice of Proposed Rulemaking, the Commission sought comment on certain accounting and related reporting requirements it identified for future reform.

The National Association of Regulatory Utility Commissioners (NARUC) recently adopted a resolution concerning regulatory accounting rules and reporting requirements. Among other things, the NARUC resolution requests that the Commission establish a Federal-State Joint Conference ''to review regulatory accounting and reporting safeguards to determine their adequacy and effectiveness in current markets and make recommendations as to future accounting and reporting changes.

III. Establishment of the Joint Conference

Accordingly, in order to further the development of improved regulatory accounting and reporting requirements and ensure that data filed by carriers are adequate, truthful, and thorough, we now convene a Federal-State Joint Conference on Accounting Issues (Joint Conference or Conference) pursuant to section 410(b) of the Communications Act. Section 410(b) provides that:

> [T]he Commission may confer with any State commission having regulatory jurisdiction with respect to carriers regarding the relationship between rate structures, accounts, charges, practices, classifications, and regulations of carriers subject to the jurisdiction of such State commission and of the Commission.

We find that the public interest will be furthered by convening an ongoing conference on regulatory accounting safeguards pursuant to this provision. The Joint Conference will provide a focused means by which we and interested state commissions may conduct an open dialogue, collect and exchange information, and consider initiatives that will improve the collection of adequate, truthful, and thorough accounting data for regulatory purposes. We expect the Conference will facilitate the continuing review of federal and state accounting and related reporting requirements.

Section 410(b) and the Commission's policies and procedures for implementing 410(b) Joint Conferences are flexible and will permit the Conference to begin rapidly an open dialogue regarding how best to make recommendations for improvements to existing regulatory accounting and related reporting requirements. Specifically, section 410(b) and our policies state that this Commission may confer with any State commission regarding matters that relate to the regulation of public utilities subject to the jurisdiction of either commission.

We further conclude that the Conference shall be chaired by the Chairman of this Commission or his designee. Any or all of the other Federal commissioners may participate in the Conference, as may representatives from up to five State commissions, whom we will invite following recommendations from NARUC. Meetings will be called by the Conference Chairman, who may establish a regular schedule for meetings after consultations with Conference members. In addition, the Conference at any point may decide to include any of its findings and recommendations in a written report to this Commission. Finally, the Commission shall revisit the need for and utility of the Joint Conference in two years time.

The activities of the Joint Conference will include the reexamination of federal and state regulatory accounting and related reporting requirements. The Joint Conference will have a broad mandate to evaluate accounting requirements that state and federal regulators need to carry out their responsibilities. This analysis could include, among other things, an evaluation of current regulatory accounting rules, consideration of the scope of these rules, and an examination of any additions to or eliminations of accounting requirements. The Conference may utilize existing federal and state data collection procedures and conduct hearings to collect information necessary to further the development of improved regulatory accounting and related reporting requirements and ensure that data filed by carriers are adequate, truthful, and thorough. Moreover, we direct the Conference specifically to consider the impact of its recommendations on local exchange carriers with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide. The activities of the Joint Conference, however, will not limit the ability of this Commission to take separate, independent action concerning regulatory accounting and related reporting requirements.

Finally, because section 410(b) provides a flexible vehicle for state-federal cooperation, we anticipate that, as appropriate, the Joint Conference will undertake efforts and utilize tools in addition to those discussed herein. We also expect that the Conference will seek the cooperation of private sector representatives, where necessary and appropriate, to assist in identifying appropriate improvements. In sum, it is our expectation that the cooperative efforts of the Conference will help restore public confidence in the telecommunications industry by improving regulatory accounting and

related reporting requirements and ensuring that data filed by carriers are adequate, truthful, and thorough.

IV. Ordering Clauses

Pursuant to section 410(b) of the Communications Act of 1934, 47 U.S.C. 410(b), that the Federal-State Joint Conference on Accounting Issues be convened.

Pursuant to section 410(b) of the Communications Act of 1934, 47 U.S.C. 410(b), that the Federal-State Joint Conference shall be chaired by the Honorable Michael K. Powell or his designee and shall be comprised of any or all of the other Federal commissioners and representatives from up to five State commissions, who shall be recommended by the National Association of Regulatory Utility Commissioners.

List of Subjects in 47 CFR Parts 32, 42, 51, and 64

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform System of Accounts.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–27569 Filed 10–29–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

49 CFR Part 1511

[Docket No. TSA–2002–11334]

RIN 2110–AA02

Aviation Security Infrastructure Fees

AGENCY: Transportation Security Administration (TSA), DOT.

ACTION: Final waiver of audit submission requirements.

SUMMARY: TSA is issuing this document to inform all air carriers and foreign air carriers that, under certain conditions, it will defer enforcement of the independent audit submission deadline set forth in the regulations on Aviation Security Infrastructure Fees. This will be the final such deferral.

DATES: Under the conditions described in this document, TSA is allowing air carriers and foreign air carriers until December 31, 2002 to finalize and submit to TSA the independent audits required by 49 CFR part 1511.

FOR FURTHER INFORMATION CONTACT: For guidance on technical matters contact Randall Fiertz, Acting Director of Revenue, (202) 385–1209. For guidance on legal or other matters contact Steven Cohen, Office of Chief Counsel, (202) 493–1216.

SUPPLEMENTARY INFORMATION: In order to offset the costs of providing civil aviation security services, TSA published in the **Federal Register** an interim final rule (67 FR 7926; February 20, 2002), codified at 49 CFR part 1511, that imposed the Aviation Security Infrastructure Fee on air carriers and foreign air carriers engaged in air transportation, foreign air transportation, and intrastate air transportation.

Sections 1511.5 and 1511.7 require these carriers to provide TSA with certain information on their costs related to screening passengers and property incurred in 2000. This information was due to be received by TSA by May 18, 2002. Section 1511.9 requires each such carrier to provide for and submit to TSA an independent audit of these costs, which were due to be received by TSA by July 1, 2002.

As reflected in the public docket on the Aviation Security Infrastructure Fee regulation, TSA–2002–11334, as available online at *http://dms.dot.gov*, TSA denied several requests that it alter the audit requirement and extend the July 1, 2002 audit deadline.

However, on three occasions TSA has announced that it would temporarily defer enforcement of the audit submission deadline against carriers that meet certain criteria related to the fees by certain dates. These criteria are that the carriers must make timely and proper fee payments, must submit any necessary revisions to their part 1511 Appendix A submission(s), and must remit all adjusted fee payments retroactive to February 18, 2002. The first announcement appeared in TSA's ''Guidance for the Aviation Security Infrastructure Fee,'' as published in the **Federal Register** on May 1, 2002 (docket item no. 20). The second announcement was in TSA's July 24, 2002, response letter to the Air Transport Association (docket item no. 35). The third such announcement, which extended this conditional waiver of enforcement of the regulation's audit submission deadline until October 31, 2002, was published in the **Federal Register** on September 4, 2002 (docket item no. 39).

TSA's motivation in allowing additional time for the carriers to provide for and submit independent audits of their Appendix A submissions has been twofold. First, the agency was responding to numerous public requests for more time to allow the carriers to conduct proper audits. Second, TSA was allowing for time for the 107th Congress to consider one of the Department of Transportation's proposed technical corrections to Section 118 of the Aviation and Transportation Security Act (Pub. L. 107–71), codified at 49 U.S.C. 44940. Among other changes, this proposed correction would have revised the current fee structure by setting the total fee at a flat amount that would then be apportioned among air carriers and foreign air carriers by TSA according to market share or another appropriate method, beginning in fiscal year 2003. This revision would have eliminated the need for each carrier to provide TSA with an independent audit of its Appendix A submissions regarding their calendar year 2000 costs related to screening passengers and property.

To date, Congress has not acted on this proposal. Because it now appears unlikely that this proposed revision will be enacted during the current session of Congress, TSA is issuing this document to allow time for carriers to finalize and submit to TSA the independent audits required by 49 CFR part 1511. By this document, under the above conditions, TSA extends the current temporary deferral of enforcement for air carriers and foreign air carriers whose independent audits are received by TSA on or before December 31, 2002. TSA is neither waiving nor deferring enforcement of any other requirement set forth in 49 U.S.C. 44940 or 49 CFR part 1511. Absent relevant statutory change prior to December 15, 2002, please note that TSA will not grant further general deferrals or waivers of the independent audit submission requirement. Air carriers and foreign air carriers that are not in compliance after December 31, 2002, will be subject to civil enforcement and other appropriate actions.

Issued in Washington, DC, on October 28, 2002.

James M. Loy,

Acting Under Secretary of Transportation for Security.

[FR Doc. 02–27734 Filed 10–28–02; 3:04 pm]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 102202A]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

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

ACTION: General category closure.

SUMMARY: NMFS has determined that the 2002 fishing year Atlantic bluefin tuna (BFT) General category quota will be attained by October 25, 2002. Therefore, the General category fishery will be closed effective 11:30 p.m. on October 25, 2002. This action is being taken to prevent overharvest of the total adjusted General category quota of 777.0 metric tons (mt).

DATES: Effective 11:30 p.m. local time on October 25, 2002, through May 31, 2003.

FOR FURTHER INFORMATION CONTACT: Brad McHale or Dianne Stephan, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories. The General category landings quota, including time-period subquotas and the New York Bight set-aside, are specified annually as required under § 635.27(a)(1). The 2002 fishing year General category quota and effort control specifications were issued on October 1, 2002 (67 FR 61537).

General Category Closure

NMFS is required, under § 635.28 (a)(1), to file with the Office of the **Federal Register** for publication notification of closure when a BFT quota is reached, or is projected to be reached. On and after the effective date and time of such closure notification, for the remainder of the fishing year or for a specified period as indicated in the notification, fishing for, retaining, possessing, or landing BFT under that quota category is prohibited until the opening of the subsequent quota period or until such date as specified in the notification.

The adjusted 2002 fishing year BFT quota specifications issued pursuant to § 635.27 set a total adjusted coastwide General category quota of 767 mt, excluding the 10 mt New York Bight set-aside, of large medium and giant BFT to be harvested from the regulatory area during the 2002 fishing year. Based on reported landings and effort, NMFS projects that this quota will be reached by October 25, 2002. Therefore, fishing for, retaining, possessing, or landing large medium or giant BFT intended for sale by persons aboard vessels in the General or HMS Charter/Headboat categories must cease at 11:30 p.m. local time October 25, 2002. The intent of this closure is to prevent overharvest of the quota established for the General category.

If it is determined that quota remains uncaught in the General category, or if additional quota can be made available to the General category through an inseason transfer, NMFS will announce the re-opening and/or transfer action in a separate **Federal Register** notice. In addition, NMFS will announce the opening date of the General category New York Bight fishery through a separate **Federal Register** notice if and when it is determined that large medium and giant BFT are available in the New York Bight area. General category permit holders may tag and release BFT while the General category is closed, subject to the requirements of the tag-and-release program at § 635.26.

Vessels permitted in the HMS Charter/Headboat category may continue to fish for and retain BFT under the Angling category regulations. The current Angling category daily retention limit, effective from June 15 through October 31, 2002 is four school, large school or small medium BFT (measuring from 27 to less than 73 inches (from 69 to less than 185 cm) curved fork length). Effective November 1 through May 31, 2003, the daily retention limit in all areas for all vessels fishing under the Angling category quota (67 FR 39869, June 11, 2002) will be adjusted to one large school or small medium BFT (measuring from 47 inches to less than 73 inches (from 119 cm to less than 185 cm) curved fork length). In addition, HMS Charter/Headboat category vessels may continue to retain one large medium or giant ''trophy'' BFT, measuring 73 inches (185 cm) or greater, per fishing year (June 1 through May 31).

Classification

This action is taken under § 635.28(a) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: October 24, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–27560 Filed 10–25–02; 11:57 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011005244–2011–02; I.D. 102202B]

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Closure of Fishery for *Loligo* Squid

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

ACTION: Closure.

SUMMARY: NMFS announces that the directed fishery for *Loligo* squid in the exclusive economic zone (EEZ) will be closed effective November 2, 2002. Vessels issued a Federal permit to harvest *Loligo* squid may not retain or land more than 2,500 lb (1.13 mt) of *Loligo* squid per trip for the remainder of the year. This action is necessary to prevent the fishery from exceeding its 2002 quota and allow for effective management of this stock.

DATES: Effective 0001 hours, November 2, 2002, through 0001 hours, January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273, fax 978–281–9135, e-mail paul.h.jones@noaa.gov.

SUPPLEMENTARY INFORMATION: Regulations governing the *Loligo* squid fishery are found at 50 CFR part 648. The regulations require specifications for maximum sustainable yield, initial optimum yield, allowable biological catch, domestic annual harvest (DAH), domestic annual processing, joint venture processing and total allowable levels of foreign fishing for the species managed under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. The procedures for

setting the annual initial specifications are described in § 648.21.

The 2002 specification of DAH for *Loligo* squid was set at 16,898 mt (67 FR 3623, January 25, 2002). This amount is allocated by quarter, as shown below.

TABLE 1.—*Loligo* QUARTERLY ALLOCATIONS.

Quarter	Percent	Metric Tons
I (Jan–Mar)	33.23	5,615
II (Apr–Jun)	17.61	2,976
III (Jul–Sep)	17.30	2,923
IV (Oct–Dec)	31.86	5,384
Total	100.00	16,898

Section 648.22 requires NMFS to close the directed *Loligo* squid fishery in the EEZ when 80 percent of the quarterly allocation is harvested in Quarters I, II and III, and when 95 percent of the total annual DAH has been harvested. NMFS is further required to notify, in advance of the closure, the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils; mail notification of the closure to all holders of *Loligo* squid permits at least 72 hours before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of the closure in the **Federal Register**. The Administrator, Northeast Region, NMFS, based on dealer reports and other available information, has determined that 95 percent of the total DAH for *Loligo* squid has been harvested. Therefore, effective 0001 hours, November 2, 2002, the directed fishery for *Loligo* squid is closed and vessels issued Federal permits for *Loligo* squid may not retain or land more than 2,500 lb (1.13 mt) of *Loligo*. Such vessels may not land more than 2,500 lb (1.13 mt) of *Loligo* during a calendar day. The directed fishery will reopen effective 0001 hours, January 1, 2003, when the 2003 quota becomes available.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: October 24, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–27607 Filed 10–25–02; 4:05 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 67, No. 210

Wednesday, October 30, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 8 and 150

[Docket No. PRM–8–1]

Nuclear Energy Institute; Denial of a Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of a petition for rulemaking.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by the Nuclear Energy Institute (NEI) (PRM–8–1). The petitioner requests that the Commission amend its regulations to supplement a formal opinion by NRC's General Counsel that the Atomic Energy Act of 1954 (AEA) has the effect of preempting to the Federal Government the field of regulation of nuclear facilities and byproduct, source, and special nuclear material. The supplement would state the principles of Federal preemption law and would include criteria governing the determination of when NRC regulations preempt requirements of non-Agreement States and local governments. The petitioner also requests that the Commission add a regulation explicitly stating that no local government or non-Agreement State may license or regulate the radiological hazards of source material, special nuclear material, or byproduct material, and provide procedures whereby any person could request an NRC staff determination as to whether a particular state or local requirement is preempted by NRC's requirements. The NRC is denying the petition because the original General Counsel opinion remains correct and the expenditure of NRC resources that would be involved in granting the petitioner's request is not justified when balanced against the minimal benefits to be anticipated from a supplement to the opinion and the proposed regulations and procedures.

ADDRESSES: Copies of the petition for rulemaking and the NRC's letter to the petitioner are available for public inspection or copying in the NRC Public Document Room, 11555 Rockville Pike, Room 01–F21, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Stuart A. Treby, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1644, e-mail: *sat@nrc.gov*.

SUPPLEMENTARY INFORMATION:

The Petition

On April 17, 2002, NEI submitted a ''Petition for Rulemaking Regarding Amendments to 10 CFR Parts 8 and 150 Relating to the Application of Federal Preemption Law'' (Petition). The main thrust of the petition is to request a change to 10 CFR 8.4: ''Interpretation by the General Counsel: AEC jurisdiction over nuclear facilities and materials under the Atomic Energy Act.'' Part 8 of the Commission's regulations contains formal interpretations by NRC's General Counsel of provisions of the AEA or NRC regulations. Section 8.4, published on May 3, 1969 (34 FR 7273), contains an interpretation of the scope of the Atomic Energy Commission's (AEC) regulatory jurisdiction over nuclear facilities and materials under the AEA, as modified by section 274 of the AEA which Congress added to the AEA in 1959.[1] Pub. L. 86–373, 73 Stat. 688. Congress established, in section 274, a program wherein the AEC was permitted to relinquish its authority over byproduct, source and special nuclear material in quantities not sufficient to form a critical mass to States who have established and agreed to maintain adequate and compatible programs for the regulation of these materials. The General Counsel's opinion states, in relevant part:

> It seems completely clear that the Congress, in enacting section 274, intended to preempt to the Federal Government the total responsibility and authority for regulating, from the standpoint of radiological health and safety, the specified nuclear facilities and materials; that it stated that intent unequivocally; and that the enactment of section 274 effectively carried out the Congressional intent, subject to the arrangement for limited relinquishment of AEC's regulatory authority and assumption thereof by states in areas permitted, and subject to conditions imposed, by section 274.

10 CFR 8.4(i) (footnote omitted). Thus, States which have not entered into agreements with the AEC, the General Counsel concluded, ''are without authority to license or regulate, from the standpoint of radiological health and safety, byproduct, source, and special nuclear material or production and utilization facilities'' (10 CFR 8.4(j)).

The petitioner recognizes that ''[s]ection 8.4 generally is accurate as far as it goes,'' but is concerned that ''it does not provide a complete summary of applicable Federal preemption principles.'' Petition at 13, n.40. The petitioner also notes that the judicial precedents and legal authorities relied upon by the General Counsel in 1969 (see 10 CFR 8.4(k)) are now out-of-date. What is needed, in the petitioner's view, is clarification of the General Counsel's opinion to conform to what the petitioner believes to be the current governing principles of Federal preemption. The petitioner believes that these principles, which the petitioner has culled from an examination of a number of Supreme Court cases and other Federal law, should be placed in a new section of § 8.4 to read as follows:

> Any local or non-Agreement State requirement that: (1) Is established, in whole or in part, for the purpose of regulating the radiological hazards of source material, special nuclear material, or byproduct material; or (2) has a direct and substantial effect on the field of regulation of the radiological hazards of source material, special nuclear material, or byproduct material; or (3) conflicts with, or stands as an obstacle to the full accomplishment of the purposes of the Act; or (4) precludes, or effectively precludes a practice or activity in the national interest on the basis of regulating the radiological hazards of source material, special nuclear material, or byproduct material, is preempted by the Commission's authority under the Act.

Petition at 25.[2] The Petitioner also requested the NRC to update § 8.4(k) to

[1] The Energy Reorganization Act of 1974 abolished the AEC and transferred to the NRC the AEC's licensing and regulatory authority over the commercial use of nuclear facilities and materials. 42 U.S.C. 5801 *et seq.*

[2] Although petitioner has suggested what petitioner believes to be the governing principles of Federal preemption law, if the petition were to be granted the General Counsel would need to undertake an independent legal review of this subject and reach conclusions which might, or might not, agree with petitioner's proposal.

include more contemporary legal authority as the basis for the opinion.

The petitioner also requested changes to 10 CFR Part 150 ''Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters Under Section 274.'' The petitioner requested that a new paragraph be added (10 CFR 150.15(c)), to summarize the General Counsel's opinion as it applies to local governments and non-Agreement States:

> No local government or non-Agreement State may license or regulate the radiological hazards of source material, special nuclear material, or byproduct material. Exclusive authority to regulate such radiological hazards resides with the Commission, except and only to the extent that the Commission has delegated its authority to a state pursuant to an agreement under subsection 274b of the Act. The Commission's interpretation of its jurisdiction over nuclear facilities and materials under the Act is provided in section 8.4 of this chapter.

Petition at 24–25.

Finally, the petitioner requested that a new section be added to Part 150 which would establish procedures by which any person may apply for a determination by the Director of the Office of Nuclear Reactor Regulation (NRR) or the Director of the Office of Nuclear Material Safety and Safeguards, (NMSS) as appropriate, as to whether a Federal [3], State, or local requirement is preempted by the Act or the Commission's regulations promulgated thereunder. Petition at 26–29. The standards for determining preemption would be those set forth in the section added to § 8.4. The procedures would include notice in the **Federal Register** of receipt of an application for a preemption determination and an opportunity for public comment; a potential investigation by the Director of NRR or NMSS of any statement in an application; an opportunity for the applicant to respond to comments; a hearing or conference at the discretion of the Director of NRR or NMSS; a written determination published in the **Federal Register**; a right for an aggrieved person to file a petition for reconsideration and for any persons who have participated in the proceeding to comment on the petition for reconsideration; and a right of a party to the proceeding to seek judicial review of the Director's decision in a district court of the United States.[4]

The petitioner asserts that the General Counsel needs to supplement the interpretation expressed in § 8.4 to include the principles of Federal preemption law because ''misunderstandings of the NRC's authority have occurred and can be expected to continue.'' Petition at 14. The examples of these misunderstandings provided by the petitioner concern a number of States and municipalities which have attempted to regulate, or have actually regulated, the discharge of radioactive materials into sewage systems. For example, the petitioner asserts that the City of Santa Fe, New Mexico, adopted an ordinance in 1997 regulating the discharge of radioactive elements into its sewer system on the mistaken assumption that it could avoid preemption if it enacted the ordinance for the purpose of furthering the economic interests of the City. Ultimately, however, the City consented to a judgment against it on a Federal preemption claim brought by a user of the sewer system. Petition at 15–16; 19–20. The petitioner believes that unauthorized State and local regulation of AEA materials is not an isolated problem and is in need of generic resolution by NRC.[5]

Reasons for Denial

The crux of the petition is the request that the General Counsel clarify the opinion stated in 10 CFR 8.4 that non-Agreement States ''are without authority to license or regulate, from the standpoint of radiological health and safety, byproduct, source, and special nuclear material or production and utilization facilities.'' The petitioner requested the General Counsel to refine this opinion by adding that local governments and non-Agreement States are without such authority when the requirement in question (1) is for the purpose of regulating the radiological hazards of AEA materials and facilities; (2) has a direct and substantial effect on the field of regulation of the radiological hazards; (3) conflicts with, or stands as an obstacle to the full accomplishment of, the purposes of the AEA; or (4) precludes, or effectively precludes, a practice or activity in the national interest on the basis of regulating the radiological hazards. These statements are derived from what the petitioner views as the governing principles of Federal preemption law.

The General Counsel has exercised the authority conferred in the Commission's regulations to issue legal opinions on the meaning of statutes and regulations which will be binding on the Commission very sparingly and only in instances involving major legal or policy questions. The petitioner's request does not involve determining unresolved legal issues; rather it simply involves restating existing law. This is not the type of question that has merited issuance of a formal legal opinion in the past and there are good reasons, explained below, for not departing from past precedent in this case.

First, and most fundamentally, the General Counsel's opinion on AEC/NRC jurisdiction over nuclear facilities and materials under the AEA is correct as it stands. The petitioner does not contend that subsequent Federal case law has rendered any part of the opinion erroneous and in need of correction; rather, the petitioner's concern is that the opinion does not provide a complete summary of applicable Federal preemption principles which have evolved in Federal case law since the opinion was issued in 1969. But case law on a general legal issue such as preemption is constantly being fine-tuned as new fact-specific situations are resolved by the courts. Absent case law rendering a formal General Counsel opinion erroneous, expending resources to update an opinion is not necessary given that developing case law is available to all interested persons, including local and State governments and the attorneys who represent them, from sources outside NRC.

Second, a General Counsel opinion on the governing principles of Federal preemption law would not be definitive and thus would be of limited value to NRC, its licensees, and the general public. The petitioner requested a formal General Counsel opinion not on the proper interpretation of one of NRC's governing statutes, or of an NRC regulation, but rather on ''the governing principles of Federal preemption.'' Petition at 1. The General Counsel is not being asked to reexamine the legislative history of § 274 of the AEA or any other provision of one of NRC's governing statutes to determine whether Congress has spoken more fully to the question of

[3] The petitioner states that ''it would be useful to include within the proposed Preemption Determination Process a mechanism for the review of requirements imposed by other federal agencies as well [and therefore] the proposed process also includes references to requirements of 'federal agencies' as well as state and local governments.'' Petition at 30–31. The petitioner, however, cites no legal authority in support of the proposition that NRC regulations could preempt those of other federal agencies.

[4] The proposed procedures are based on similar procedures in place within the Department of Transportation's (DOT) regulations for the transportation of hazardous materials. *See* 49 CFR 107.201–107.227 (2001). The DOT procedures are explicitly required by statute. *See* 49 U.S.C. 5125(d).

[5] NRC, in conjunction with the Environmental Protection Agency, is in the process of revising draft ''Guidance on Radioactive Materials in Sewage Sludge and Ash at Publically Owned Treatment Works,'' issued in July 2000. NRC anticipates that the final guidance will contain a discussion of Federal preemption case law as it applies to requirements of publicly owned treatment works.

NRC's preemption of the field of nuclear regulation than is reflected in the present General Counsel opinion. The General Counsel, instead, was asked to render an opinion on the broad question of what present Federal case law points to as the governing principles of Federal preemption. The petitioner acknowledges that ''the agency's determinations presumably would not be binding on a court,'' Petition at 5, and it is not evident that the General Counsel's opinion on this broad question would be entitled to the same weight as would be given to an agency's interpretation of its governing statute. Thus, a General Counsel opinion on this issue is unlikely to obtain for the agency an important benefit that normally would be expected to attach to a formal opinion. Similarly, the procedures for seeking an NRC staff determination as to whether State or local requirements are preempted by NRC's requirements would result only in guidance as to what, given current Federal preemption case law, a court might determine with respect to a State or local requirement challenged on preemption grounds. Agency procedures are wholly unnecessary because those persons subject to State or local requirements are free to take their preemption arguments to a Federal court for definitive resolution regardless of the NRC's views or even without seeking these views.

Finally, while the General Counsel's views on the subject of Federal preemption might provide guidance, this benefit must be balanced against the expenditure of agency resources that would be necessitated by the petitioner's request. In addition to the resources needed to undertake a legal review of judicial case law on the subject of Federal preemption and to undertake a rulemaking proceeding, the resources needed to implement the procedures requested by the petitioner for rendering NRC staff determinations on preemption could be considerable. These procedures include **Federal Register** notices, potential hearings, the need to respond to comments both on the initial application for a determination of preemption and for any petition for reconsideration, a formal written decision, and, potentially, the need to defend the NRC'S decision in court if judicial review is sought. The nature of the problem described by the petitioner does not warrant the expenditure of resources that would likely be involved. Local governments and non-Agreement States might be expected to look to their own counsel for competent advice on the state of Federal preemption law, particularly because a General Counsel opinion would not be definitive on this issue. Persons harmed by the occasional unwarranted assertion of authority by a local government or non-Agreement State into the regulatory field reserved to the NRC have a ready remedy in the judicial system which can strike down requirements which are preempted by NRC regulations. In short, the petitioner's request is likely to require substantial expenditure of NRC resources with little benefit to either NRC or its licensees or the broader public.

For all the reasons stated above, the NRC denies the petition in its entirety.

Dated at Rockville, Maryland, this 24th day of October, 2002.

For the Nuclear Regulatory Commission,

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02–27590 Filed 10–29–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–2002–13069]

RIN 2125–AE78

Traffic Control Devices on Federal-Aid and Other Streets and Highways; Standards

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The FHWA proposes to revise its regulation on traffic control devices on Federal-aid and other highways, which prescribes procedures for obtaining basic uniformity of traffic control devices on all streets and highways. Recently, the FHWA underwent agency reorganization and various offices and position title changes were made within the headquarters and field offices. Therefore, we propose to provide nomenclature changes and to remove a reference to an outdated regulation.

DATES: Comments must be received on or before December 30, 2002.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination at the above address from 9 to 5 p.m. e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or print the acknowledgement page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Huckaby, Office of Transportation Operations, (202) 366–9064; or Mr. Raymond W. Cuprill, Office of the Chief Counsel, (202) 366–0791, U.S. Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit.* Acceptable formats include: MS Word, MS Word for Mac, Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Formation (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661 by using a computer, modem, and suitable communications software. Internet users may also reach the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara.*

Background

This document proposes to revise the regulation that prescribes procedures for obtaining basic uniformity of traffic control devices on all streets and highways in order to provide nomenclature changes, and to remove the outdated reference to an outdated regulation. The Manual on Uniform Traffic Control Devices (MUTCD) is approved by the Federal Highway Administration and recognized as the national standard for traffic control on all public roads. It is incorporated by reference into the Code of Federal

Regulations at 23 CFR part 655. Due to the reorganization of the FHWA and the deletion of 23 CFR 1204.4 by the National Highway Traffic Safety Administration (NHTSA), it is necessary to update 23 CFR 655.603.

The FHWA is issuing this notice to provide an opportunity for public comment on the proposed changes to 23 CFR 655.603. Based on the comments received and its own experience, the FHWA may issue a final rule concerning the proposed changes included in this notice at any time after the close of the comment period.

Discussion of Proposed Amendments

The FHWA underwent restructuring in 1999 and various office and position title changes were made within the Headquarters and field offices. The FHWA regional offices were eliminated, resource centers were established, and additional responsibilities were given to FHWA's division offices (located in each State, Puerto Rico and the District of Columbia) and the Federal Lands Highway offices. These organizational changes require us to update § 655.603(b)(1), and § 655.603(b)(2), to reflect changes that resulted in the restructuring of the FHWA in 1999.

The FHWA proposes to modify the first sentence in § 655.603(b)(2) to delete the phrase ''with the concurrence of the Office of Traffic Operations.'' The deletion of this phrase is based on the similar technical abilities of the Federal Lands Program offices and the FHWA Division offices. Additionally, the FHWA proposes to have the Associate Administrator of Federal Lands Highway Program Office approve the MUTCDs of the other Federal land management agencies (Bureau of Indian Affairs, National Park Service, Forest Service, and U.S. Fish and Wildlife Service).

Section 655.603(d)(1) discusses the systematic upgrading of substandard traffic control devices and installation of devices that conform to the MUTCD. This section refers to a program required by the former Highway Safety Program Standard Number 13, Traffic Engineering Services (23 CFR 1204.4), a National Highway Traffic Safety Administration (NHTSA) regulation and must be amended to remove the reference to 23 CFR part 1204.

The Highway Safety Act of 1966 (Pub. L. 89–564; 80 Stat 731; September 9, 1966), amended title 23, United States Code to add Chapter 4, entitled ''Highway Safety.'' Section 402(a) of the U.S. Code, the Highway Safety program, required that States have a highway safety program designed to reduce traffic accidents and deaths, injuries, and property damage resulting from traffic accidents. These programs were to be in accordance with uniform standards promulgated by the Secretary of transportation. The NHTSA was the agency within the U.S. DOT responsible for promulgating these uniform standards. Originally promulgated in November 1966, these uniform standards were codified in 23 CFR 1204. There were 18 standards in all.

Standard number 13 of the uniform standards, entitled ''Traffic Control Devices'' required, among other things, that each State's highway safety program have, at a minimum: a method to identify needs and deficiencies of traffic control devices; a method to upgrade all existing traffic control devices on all streets and highways to conform with standards issued by the Federal Highway Administrator; and program for preventive maintenance, repair, and daytime and nighttime inspection of all traffic control devices.[1]

Until the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100–17; April 2, 1987), it was mandated that the States complied with these 18 standards, as there was financial sanctions imposed for non-compliance. In 1987, Congress revised 23 U.S.C. 402(a) to replace the word ''standards'' with the word ''guidance.'' This change, combined with the changes made to the Highway Safety Program under the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240; December 18, 1991) lead to the revision of the uniform standards by NHTSA. In 1995, NHTSA revised the standards to make them guidelines and removed them from the code of Federal Regulations.[2] The guidelines, now 21 in all, are published in separate documents made available to the States.

Guideline 21, entitled ''Roadway Safety,'' captures the requirements of former standard number 13 in that the same requirements regarding traffic control devices remain. This Guideline (No. 21) was published as a notice in the **Federal Register** on July 18, 1995 (60 FR 36641, 36665).

Section 655.603(d)(1) discusses the systematic upgrading of substandard traffic control devices and installation of devices to conform to the MUTCD. Currently, it still refers to 23 CFR 1204, which has since been removed from the Code of Federal Regulations; therefore, we proposed to amend § 655.603(d)(1) to reflect this change.

[1] *See* 33 FR 16560. 16564; November 14, 1966. Originally codified in 23 CRF 204, however, it was redesignated as 23 CFR 1204 in 1973 at 38 FR 10810; May 2, 1973.

[2] *See* 60 FR 36641, July 18, 1995.

Rulemaking Analysis and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that this action will not be a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of U.S. Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. The changes proposed in this notice are intended to clarify 23 CFR 655.603 in light of the FHWA reorganization and to remove the reference to an outdated regulation. The FHWA expects that these proposed changes will provide clarity at little or no additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of these proposed changes on small entities. This action proposes to update the authorities of the FHWA, and referenced documents regarding MUTCD compliance on existing highways. Such updates will provide transportation entities with the appropriate points of contact regarding the MUTCD. The FHWA hereby certifies that these proposed revisions would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This notice of proposed rulemaking would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48, March 22, 1995). This proposed action will not result in the expenditure by State, local, and tribal governments,

in the aggregate, or by the private sector, of $100 million or more in any one year to comply with these changes as these proposed changes are minor and non-substantive in nature, requiring no additional or new expenditures.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and the FHWA has determined that this proposed action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States and local governments. The FHWA has also determined that this proposed rulemaking will not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions and does not have sufficient federalism implications to warrant the preparation of a Federalism assessment. The proposed amendments are in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of highways.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposed action under Executive Order 13175, dated November 6, 2000, and believes that it would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this proposed action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been 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. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposed action does not contain collection information requirements for purposes of the PRA.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

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

Executive Order 12630 (Taking of Private Property)

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

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the national Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it would not have any effect on the quality of the environment.

Regulation Identification Number

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

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

Issued on: October 24, 2002.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 23, Code of Federal Regulations, part 655, subpart F as follows:

PART 655—TRAFFIC OPERATIONS

1. The authority citation for part 655 continues to read as follows:

Authority: 23 U.S.C. 101(a), 104, 109, 114(a), 217, 315, and 402; 23 CFR 1.32; and 49 CFR 1.48.

Subpart F—[Amended]

2. Revise § 655.603, paragraphs (b)(1), (b)(2) and (d)(1) to read as follows:

§ 655.603 Standards.

* * * * *

(b) *State of Federal MUTCD.* (1) Where State or other Federal agency MUTCDs or supplements are required, they shall be in substantial conformance with the national MUTCD. Changes to the national MUTCD issued by the FHWA shall be adopted by the States or other Federal agencies within 2 years of issuance. The FHWA Division Administrators shall approve the State MUTCDs and supplements that are in substantial conformance with the national MUTCD.

(2) The FHWA Associate Administrator of the Federal Lands Highway Program shall approve other Federal land management agencies' MUTCDs that are in substantial conformance with the national MUTCD. States and other Federal agencies are encouraged to adopt the national MUTCD as their official Manual on Uniform Traffic Control Devices.

* * * * *

(d) *Compliance*—(1) *Existing highways.* Each State, in cooperation with its political subdivisions, and Federal agency shall have a program as required by 23 U.S.C 402(a), which shall include provisions for the systematic upgrading of substandard traffic control devices and for the installation of needed devices to achieve conformity with the MUTCD.

* * * * *

[FR Doc. 02–27608 Filed 10–29–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 960]

RIN: 1512–AC76

Red Hill (Oregon) Viticultural Area (2001R–88P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: ATF received a petition that proposes the establishment of ''Red Hill'' as a viticultural area within the state of Oregon. Mr. Wayne Hitchings, a vineyard owner in the proposed area, filed the petition. The proposed area consists of approximately 5,500 acres or 8.6 square miles. Mr. Hitchings believes that ''Red Hill'' is a widely known name for the proposed area and that the area is well defined and distinguishable from other areas by its soil, elevation, climate, and topography.

DATES: Written comments must be received by December 30, 2002.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221; (ATTN: Notice No. 960). To comment by facsimile or e-mail, see the ''Public Participation'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Tim DeVanney, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202–927–8210.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

What Is ATF's Authority To Establish a Viticultural Area?

As the delegate of the Secretary of the Treasury, ATF has authority under the Federal Alcohol Administration Act, 27 U.S.C. 205(e), to prescribe regulations that insure that alcohol beverages are labeled or marked adequately as to product identity information.

ATF published Treasury Decision ATF–53 (43 FR 37672) on August 23, 1978. This decision revised the regulations in 27 CFR part 4, Labeling and Advertising of Wine, to allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added part 9, American Viticultural Areas, the listing of approved viticultural areas, to title 27 of the Code of Federal Regulations. The viticultural area names found in this listing may be used as appellations of origin.

What Is the Definition of an American Viticultural Area?

Title 27 CFR 4.25a(e)(1)(i) defines a viticultural area as a delimited grape-growing region distinguishable by geographical features. Viticultural features such as soil, climate, elevation, topography, etc., distinguish it from surrounding areas.

What Is Required To Establish a Viticultural Area?

Any interested person may petition ATF to establish a grape-growing region as a viticultural area. Under 27 CFR 9.3, the petition must include all of the following items.

- Evidence that the name of the proposed viticultural area is locally and/or nationally known to refer to the area specified in the petition.
- Historical or current evidence that the boundaries of the viticultural area are as specified in the petition.
- Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) that distinguish the proposed area from surrounding areas.
- A description of the specific boundaries of the viticultural area, based on features that can be found on United States Geological Survey (USGS) maps of the largest applicable scale.
- A copy of the appropriate USGS map(s) with the boundaries prominently marked.

What Impact Will This Have on Current Wine Labels?

If this proposed viticultural area is approved, bottlers with brand names similar to the name of the viticultural area must review existing products to assure that they are eligible to use the viticultural area's name as the appellation of origin (85% of the grapes used to make a wine must be grown within the viticultural area). If a product is not eligible to use the viticultural area as an appellation, the bottler must obtain approval of a label with a different brand name for that wine. (See § 4.39(i))

Red Hill Petition

ATF received a petition from Mr. Wayne Hitchings, a vineyard owner in the proposed area. Mr. Hitchings petitioned ATF to establish a viticultural area within the State of Oregon to be known as ''Red Hill.'' The proposed viticultural area is located entirely within the Umpqua Valley viticultural area near Yoncalla, Oregon, in northeastern Douglas County.

The proposed area encompasses approximately 8.6 square miles or 5,500 acres. Mr. Hitchings, the sole grower within these boundaries, devotes approximately 194 acres to the cultivation of wine grapes. Currently, no bonded wineries exist in the proposed area.

The following chart details Red Hill's current grape varietal breakdown by acres.

Grape varietal	Acreage
Pinot Noir	153
Chardonnay	18
Gewurztraminer	7
Reisling	5
Pinot Blanc	5
Cabernet Sauvignon	2.5
Pinot Gris	2
Zinfandel	1

What Name Evidence Has Been Provided?

Two prominent families of historic importance, the Scotts and the Applegates, established Red Hill in the mid-19th century. Together, they settled the valleys at the foot of this prominent, elongated hill located two miles southeast of Yoncalla, Oregon. According to the petitioner, the name ''Red Hill'' derives from the color of the soil exclusive to this area.

By 1847, both the Applegates and the Scotts had land claims nearby. By 1850, with Congress passing the Donation Land Law and the large influx of settlers, quality agricultural lands were receiving patents or new filings. With such rapid settlement, pioneers took much of the quality land, including the Red Hill settlements, by the time of statehood in 1859.

By 1879, a school district was established in the Red Hill area, and a schoolhouse was constructed on Red Hill Road. The school's location can be found on a copy of the USGS map of Drain, Oregon, which is printed on a scale of 1:62,500 and dated 1956. The petitioner provided this map, which also shows the school on Red Hill Road as ''abandoned.'' This school district operated until 1943, when it merged with the Pleasant Valley District. The name ''Red Hill'' also identifies Red Hill

Road, which appears as a ''light duty'' road running through sections 34, 35, and 26 of this map.

A copy of a page taken from ''Douglas County Schools, A History Outline'' by Larry Moulton, October 2000, includes directions to the old school site, which is referred to as ''Red Hill (#10),'' and a hand-drawn map showing ''Red Hill Road'' and ''Red Hill School Site.'' In addition, the petitioner provided photographs of various Red Hill signs including a Douglas County road sign, an exit sign from Interstate 5 (exit number 150), and a directional road sign to Red Hill.

In 1969, 7.5 acres of varietal grape vineyards were first planted on a slope that offered southern exposure on Red Hill. Another landowner planted 4 acres of wine grapes in 1970. The present total vineyard area is approximately 194 acres, and other plantings are currently taking place.

The petitioner furnished a variety of documents that use the name ''Red Hill'' in various capacities. One example is a copy of a Charles Metsker map drawn in 1932 that identifies sections 24 and 25 as ''Red Hill.'' The designation ''Red Hill School District 10'' also appears in section 26 of this map.

The petitioner states that the name ''Red Hill'' can also be found at a USGS Internet site that has a database for geographical names. The database can be found at *http://mapping.usgs.gov/www/gnis/*. This database, known as Geographic Names Information System, is the United States' official repository of domestic geographic names information. It contains information on over a million geographic features of physical and cultural importance in the United States. This database uses Federally recognized name references to find a feature's location by State, county, and geographic coordinates. The name ''Red Hill'' with reference to the proposed area is found in several locations in this database.

What Evidence Relating to Geographical Features Has Been Provided?

Red Hill's geology is part of the Umpqua Formation. It is formed of tholeitic, olivine-bearing basalts similar in composition to the volcanic rocks that are presently on the Pacific Ocean floor. This area, formed during the Eocene Epoch, folded into a complex of synclines and anticlines, with deep, high-iron-content basalt being the underlying structure. The hill has numerous rising domes that present an undulating appearance.

Soil

According to the petitioner, all soils of the proposed Red Hill viticultural area are similar in structure. The petitioner included a soils map with a legend, which is color-coded for various soil types. The Jory series is predominant, as illustrated by the color-coded soils map, and is the deepest soil type. These soils form a uniform reservoir of both texture and depth across Red Hill.

Appearing less often, and mixed within the Jory series, are the Nekia, Philomath, and Dixonville series. These, like the Jory, are formed in residuum (residual soil material) from weathered basalt and possess similar soil color and drainage characteristics. The noticeable difference is found in the depth of soils. The Jory series is 5 to 15 feet deep, while the other series have depths of 3 to 8 feet. These deep, well-drained soils change in structure and depth below the 800-foot contour line delineating Red Hill on the western and southern flanks, with sedimentary rocks being the base.

A typical Jory pedon, the smallest volume of what can be called a soil, can be found at 1,900 feet north and 1,900 feet west of the southeast corner of section 34, Township 23 South, Range 5 West. The petitioner included a soil analysis of this pedon, which segregated into six sections to a depth of 60 inches. The first two sections (0 to 8 inches and 8 to 16 inches) are ''moderately acid'' silty clay loam of a reddish brown color. The third through sixth sections (16 to 24 inches, 24 to 33 inches, 33 to 48 inches, and 48 to 60 inches, respectively) are all ''strongly acid,'' with the third section a dark reddish brown in color and the fourth through sixth sections dark red. Bedrock is found at 60 inches or deeper.

Mr. Jerry Maul, a former Douglas County extension agent, writes in a letter dated March 2, 2001, about the appellation status of the Red Hill region of Douglas County. He states that Jory soils found in other regions of the State are accepted as the ''premier soil[s]'' in the production of wine grapes. To some extent, these soils can be found at Dundee Hills, Oregon, and in the foothills west of Corvalis, Oregon.

The petitioner also submitted a letter from Mr. Walt Barton, an engineering technician for the Douglas Soil and Water Conservation District. Mr. Barton states in his letter, ''This soil [Jory Series] in Douglas County is unique to the Red Hill District. * * * In contrast, the soils in the surrounding area are shallow or poorly drained and are formed from sedimentary rock.'' He also states that the Jory series is deep, well drained, and derived from bedrock.

Climate

As stated by the petitioner, elevations of the proposed viticultural area are above 800 feet, with most of the land below 1,200 feet. These elevations have a significant effect on growing conditions and allow grapes to mature at a slower rate. This effect produces small cluster grapes of ''high acid'' and intense flavors.

According to the petitioner, the Red Hill climate is one of a large number of different microclimates within a relatively short distance. The climate changes are mainly caused by associated landforms and differences in altitude. Within the elevations of Red Hill, the landforms also provide for cold air drainage. This keeps the vineyards in the proposed viticultural area frost-free, while the nearby vineyards on the valley floors are frequently frozen.

In general, the regional climate is largely affected by the coastal weather systems 50 miles to the west. These storm systems are bounded by the Callahans, a group of mountains running north and south in the Coastal Range. The Callahans allow adequate winter precipitation, while combating the cold, continental weather. The result is a moderate winter climate. During the summers, numerous ''Pacific highs'' replace the winter storm patterns. Dry, warm summers throughout the region result. These climate changes typically occur during May and November.

According to the petitioner, the microclimate is apparent at Red Hill in other ways. Fog occurs occasionally in both the winter and the summer. This condition can be extreme. Frequently, the valley floors of the surrounding area are completely fogged in, while Red Hill experiences full sun (above 900 feet). This condition is often reversed, with Red Hill being totally fogged in while visibility at the valley floors is unlimited.

The petitioner states that the temperatures throughout the Umpqua Valley viticultural area differ greatly, creating numerous microclimates. In the Red Hill area, daytime growing temperatures are moderated by both elevation and surrounding terrain, in comparison to lower elevations that experience daytime temperatures occasionally as high as 105 °F. Red Hill's average daytime temperature during the growing season is 75 °F. Temperature recordings at Oakland, Sutherlin, and Roseburg can differ from Red Hill by as much as 11 °F during the day. Nighttime temperatures are typically 7 degrees lower than those in

surrounding areas during the summer months.

In one of the letters referenced previously, Mr. Jerry Maul states that ''Bloom and ripening dates may be 12 days later than the rest of the Umpqua [Valley] Appellation and 4 to 7 days ahead of comparable varieties in the Willamette Appellation. Annual precipitation at Red Hill is usually 10 inches less than the Willamette Appellation.''

The petitioner provided temperature data based on monthly averages during the annual growing period of April through October. The data were collected at Red Hill and at the Roseburg Regional Airport in 1998, 1999, and 2000. The airport site is approximately 20 miles south of Red Hill. During this 3-year period, the average high temperatures were, as expressed in Fahrenheit degrees, 74.5 for Roseburg and 72.3 for Red Hill; the average low temperatures were 50 for Roseburg and 46.4 for Red Hill.

Precipitation

The petitioner submitted precipitation data from six locations. One site is found on Red Hill Road, and the other five are located at lower elevations outside the proposed area.

The petitioner states that total rainfall in the proposed viticultural area averages 51 inches per year at the 1,000-foot elevation. The valley floor below, which is at a 600-foot elevation, receives approximately 40 inches of rain per year. The petitioner submitted rainfall statistics for the proposed area, as well as for locations outside its boundaries. Mean average annual rainfall is shown by location in the following chart. Latitude and longitude coordinates and elevations are included.

Location name	Elevation (Feet)	Longitude/latitude	Mean average annual rainfall (inches)
Red Hill Road	1,030	123.16° W. 43.31° N.	51.53
Oakland, Oregon	430	123.18° W. 43.25° N.	40.86
Drain, Oregon	290	123.19° W. 43.40° N.	45.70
Sutherlin	600	123.14° W. 43.25° N.	41.81
KQEN, Roseburg	420	123.22° W. 43.13° N.	32.44
Winchester	460	123.22° W. 43.17° N.	34.29

What Boundary Evidence Has Been Provided?

According to the petitioner, the boundaries of the proposed viticultural area are located in the northeastern portion of Douglas County in the State of Oregon. The proposed area is entirely within the Umpqua Valley viticultural area.

Red Hill parallels the east side of the Interstate 5 corridor for approximately 8.5 miles. The hill is readily seen as a dominant geological structure at ''Exit Number 150, Red Hill.'' The hill itself runs in a north-south direction, with most of the slope facing westward. The hill has numerous rising domes that give it an undulating appearance.

The petitioner selected the Red Hill proposed viticultural boundaries based on the preferred vineyard slope, which faces southwest. The prescribed minimum elevation is the 800-foot contour line and the average maximum elevation is 1,200 feet. The petitioner contends that this is the likely altitude limitation for quality grape production at this latitude.

Another factor in establishing boundaries is soil composition. According to the petitioner, the dominant soils found within the proposed boundaries are mostly deep and well drained down to a 15-foot depth. These soils are volcanic in origin and are formed in residuum. Jory soils are exclusive within the proposed boundaries, except at higher, adjacent elevations where climate conditions are not suitable for grape growing.

The boundaries of the proposed Red Hill viticultural area are more particularly discussed in § 9.175(c) of the regulations, as identified at the end of this notice.

Regulatory Analyses and Notices

Is This a Significant Regulatory Action as Defined in Executive Order 12866?

This regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this proposed rule is not subject to the analysis required by Executive Order 12866.

How Does the Regulatory Flexibility Act Apply to This Proposed Rule?

The proposed regulations will not have significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor an approval by ATF of the quality of wine produced in the area. Rather, it is an identification of an area distinct from surrounding areas. ATF believes that the establishment of viticultural areas allows wineries to describe the origin of their wines more accurately to consumers and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of a proprietor's own efforts and consumer acceptance of wines from that area. No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Does the Paperwork Reduction Act Apply to This Proposed Rule?

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)) and its implementing regulations, 5 CFR part 1320, do not apply to this proposed rule because no requirement to collect information is proposed.

Public Participation

Who May Comment on This Notice?

ATF requests comments from all interested persons. Specifically, ATF requests comments on the potential for name confusion between the proposed Red Hills (plural) viticultural area in Lake County, California, and the proposed Red Hill (singular) viticultural area in Oregon. To resolve this problem, ATF is considering using the names ''Red Hills—California'' and ''Red Hill—Oregon'' for these respective viticultural areas. In both cases the State name would appear in direct conjunction with the viticultural area name. Comments on the proposed names and suggestions for other names are encouraged and will be given consideration.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

How May I Review Comments?

Copies of this petition, the proposed regulations, the appropriate maps, and any written comments received may be viewed by appointment at the ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226. The library telephone number is 202–927–7890. You may request copies of comments (at 20 cents per page) by writing to the ATF librarian at the address shown above.

For the convenience of the public, ATF will post comments received in response to this notice on the ATF Web site. All comments posted on our Web site will show the name of the commenter. Street addresses, telephone numbers, and e-mail addresses will be removed. We may also omit voluminous attachments or material that we do not consider suitable for posting. In all cases, the full comment will be available in the library as noted above. To access online copies of the comments on this rulemaking, visit *http://www.atf.treas.gov/* and select ''Regulations,'' then ''Notices of proposed rulemaking (Alcohol).'' Next, select ''View Comments'' under this notice number.

Will ATF Keep My Comments Confidential?

ATF will not recognize any comment as confidential. All comments and materials will be disclosed to the public. If you consider your material to be confidential or inappropriate for disclosure to the public, you should not include it in the comments. We will also disclose the name of any person who submits a comment.

Will a Public Hearing Be Held?

During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

How Do I Send Facsimile Comments?

You may submit comments by facsimile transmission to 202–927–8525. Facsimile comments must:

- Be legible;
- Reference this notice number;
- Be on paper 8½ by 11 inches in size;
- Contain a legible, written signature; and
- Be five pages or less.

This length limitation is necessary to assure the public reasonable electronic access to our equipment. We will not accept faxed comments in excess of five pages. We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

How Do I Send Electronic Mail (E-mail) Comments?

You may submit comments by e-mail by sending the comments to: *nprm@atfhq.atf.treas.gov*. You must follow these instructions. E-mail comments must:

- Contain your name, mailing address, and e-mail address;
- Reference this notice number;
- Be legible when printed on 8½ x 11-inch paper.

We will not acknowledge receipt of e-mail. We will treat comments submitted by e-mail as originals.

How Do I Send Comments to the ATF Internet Web Site?

You may also submit comments using the comment form provided with the online copy of the proposed rule on the ATF Internet Web site at *http://www.atf.treas.gov*.

Drafting Information

The principal author of this document is Tim DeVanney, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

2. Subpart C is amended by adding § 9.175 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.175 Red Hill.

(a) *Name*. The name of the viticultural area described in this section is ''Red Hill''.

(b) *Approved Maps*. The appropriate maps for determining the boundaries of the Red Hill viticultural area are three United States Geological Survey topographic maps, with a scale of 1:24,000. They are:

(1) Sutherlin, Oreg. (Provisional Edition 1988);

(2) Scotts Valley, Oreg. (Provisional Edition 1987); and

(3) Yoncalla, Oreg. (Provisional Edition 1987).

(c) *Boundaries*. The Red Hill viticultural area is located in the State of Oregon in the northeastern section of Douglas County and is entirely encompassed by the Umpqua Valley viticultural area. Its boundaries are defined as follows:

(1) The point of beginning, shown on the Yoncalla, Oregon, map, is defined as the intersection of township line T23 South/T24 South with the north-south running pipeline at the south end of section 35. From this point, the boundary line follows the pipeline northeast through sections 35 and 26, to the Scotts Valley, Oregon, map;

(2) On the Scotts Valley map, the boundary follows the pipeline northeasterly through sections 26, 23, 24, 13, and 12 approximately 3.7 miles until the pipeline intersects with the 800-foot contour line in section 1. From this point, the 800-foot contour line is the boundary, and it bears sharply west, then north, then southeast. It crosses the pipeline and continues through section 1, next crossing the Range 5 West/Range 4 West line into section 6. It continues southeast, then northeast, and then northwest until it intersects with a power line and then the pipeline. The line continues northwest to the intersection with the Range 5 West/Range 4 West line, then bears southwest approximately 2.2 miles to section 14, through sections 1, 12, 11, 43, 11, and 14 onto the Yoncalla, Oregon, map;

(3) On the Yoncalla map, the boundary continues through section 14 and crosses an unimproved road in section 44, then through section 14 into section 23. It next crosses Wilson Creek in section 23 and continues southwesterly through sections 23, 22, 46, 22, and 27, back into 22 and through 27 into 34. In 34, it intersects with an improved road and continues west into section 33, crosses a four-wheel-drive trail twice and an unimproved road. It continues southwest through sections 33 and 32, then back through section 33 and across a four-wheel-drive trail to the intersection of sections 32, 33, 4, and 5. The 800-foot contour line continues first southwest, then generally southeast through section 5. Continuing northeast, then generally southeast, then southwest through section 4, the boundary crosses improved roads in three places and two unimproved roads. It then travels generally southwest through section 4, crossing an improved road and two unimproved roads, then continues generally south through sections 5, 8, and 9, and onto the Sutherlin, Oregon, map;

(4) On the Sutherlin map, the boundary continues southwest through section 8, then generally southeast into

section 9. It crosses in and out of sections 9 and 16 multiple times in a generally easterly direction into section 10. The boundary, the 800-foot contour line, then alternates directions southeast and northeast through section 10 and back to the Yoncalla, Oregon, map.

(5) On the Yoncalla map, the boundary continues in a generally northern direction through sections 10 and 3 to the intersection of Pollock Creek and township line T23 South/T24 South. From this point, the boundary continues directly east to intersect with the beginning point.

Signed: October 11, 2002.

Bradley A. Buckles,

Director.

[FR Doc. 02–27444 Filed 10–29–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 961]

RIN 1512–AC66

Red Hills (California) Viticultural Area (2001R–330P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms has received a petition proposing the establishment of the ''Red Hills'' viticultural area in Lake County, California. This proposed 31,250-acre viticultural area lies entirely within the current Clear Lake viticultural area in Lake County, which is, in turn, entirely within the multi-county North Coast viticultural area.

DATES: Written comments must be received by December 30, 2002.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221, (Attn: Notice No. 961). See the ''Public Participation'' section of this document for alternative methods of commenting.

Copies of the petition, the proposed regulations, the appropriate maps, and any written comments received will be available for public inspection during normal business hours at the ATF Reference Library, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202–927–7890.

FOR FURTHER INFORMATION CONTACT: N. A. Sutton, Specialist, Regulations Division (San Francisco, CA), Bureau of Alcohol, Tobacco and Firearms, 221 Main Street, 11th Floor, San Francisco, CA 94105–1906; telephone (415) 947–5192.

SUPPLEMENTARY INFORMATION:

Background

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity while prohibiting the use of deceptive information on such labels. The FAA Act also authorizes the Bureau of Alcohol, Tobacco and Firearms (ATF) to issue regulations to carry out the Act's provisions.

Regulations in 27 CFR part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. A list of approved viticultural areas is contained in 27 CFR Part 9, American Viticultural Areas.

Section 4.25a(e)(1), title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been delineated in subpart C of part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) *Evidence relating* to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Impact on Current Wine Labels

If this proposed viticultural area is approved, bottlers using brand names similar to the name of the viticultural area must review their existing products to insure that they are eligible to use the viticultural area's name as the appellation of origin. To be eligible, 85% of the grapes in a wine must be grown within the viticultural area. If a product is not eligible to use the viticultural area as an appellation, the bottler must obtain approval of a label with a different brand name for that wine. (See 27 CFR 4.39(i).)

Red Hills Petition

The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition proposing a new viticultural area to be called ''Red Hills.'' The petition was filed by Sara Schorske of Compliance Service of America on behalf of several grape growers within the proposed viticultural area. Located about 80 miles north of San Francisco, the proposed 31,250 acre viticultural area is located entirely within the Clear Lake viticultural area in Lake County, California, which is, in turn, within the larger multi-county North Coast viticultural area. Approximately 2,500 acres are planted to grapes with another 3,000 to 5,000 acres available for vineyards.

Situated on a large tract of rocky, red-colored volcanic soil, the petitioner contends that the proposed Red Hills viticultural area is distinct from the surrounding region. Steep ridges, volcanic mountains, and a large body of water, Clear Lake, border the proposed area's upland plain. The petitioner states the proposed viticulture area's distinctive microclimate is derived from its gently rolling terrain and its close proximity to a large lake and surrounding mountains.

Evidence That the Name of the Area Is Locally or Nationally Known

The petitioner indicates the area is locally known as Red Hills. The name reflects the area's prevalent red, volcanic soils and gentle hilly terrain. The petitioner submitted evidence documenting the name's current usage, including references to this area as the Red Hills district, Red Hills area, Red Hills walnut district and Red Hills agricultural district in Lake County Planning Department documents. The petitioner also notes the University of California Red Hills weather station and the Red Hills Geothermal Prospect area are both located within the proposed viticultural area. Red Hills Road, which meanders through the proposed area's southwest quadrant, is shown on a Rand McNally county map, the Lake County Travel Atlas, DeLorme's Northern California Atlas, and in a published

listing of local scenic roads. Red Hills Country Day School is located along this road.

The petitioner also submitted evidence documenting the historical usage of the Red Hills name, including a 1977 description of the area's ''rolling red soil'' by local historian Henry Mauldin. He emphasized that the name Red Hills defined the area and not a separate prominent point. A 1949 written account of the Red Hills walnut territory indicated its location on both sides of Red Hills Road within the proposed viticultural area.

Historical or Current Evidence That the Boundaries of the Viticultural Area Are as Specified in the Petition

According to the petitioner, the proposed area's boundaries are based on historical and current viticulture, geographical features, and a unique microclimate.

Historically, walnuts have been the major agricultural crop of this area, prospering on the red soil and rolling terrain. Around the time of Prohibition, two small vineyards were replaced with walnut orchards, but in more recent years several old orchards have been replanted to wine grapes. There are now 2,500 acres of vineyards in the proposed viticultural area, and more blocks are planned for future development.

Geographical factors also help define the proposed viticultural area's borders, according to the petitioner. These factors include the self-containment of the area, with its mountain, ridge, and lake boundaries, its hilly terrain, and its blanket of red, volcanic soils. The petitioner also notes the geography and location of the area promote the moderating microclimate and wind patterns that allow for viticulture without damaging frosts. These factors are discussed further below.

Evidence Relating to the Geographical Features Which Distinguish the Proposed Area's Viticultural Features

The petitioner states that the proposed Red Hills viticultural area's boundaries are based on a combination of terrain, soil, and climate factors that contrast with the surrounding area.

Physical Features

Lake County is generally mountainous, with protected fertile valleys and a large lake near its center. Mt. Konocti, a volcano outside the northwest boundary of the proposed area, and Clear Lake are two notable geographical points in the county.

South of Clear Lake is a field of volcanic hills and mountains. The proposed Red Hills viticultural area is within this volcanic field of gently rolling terrain, which is covered with rocky, red volcanic soil. It is bordered on the north by Mt. Konocti and Clear Lake, on the south by the Coast Range mountain chain, and on the east and west by ridges. The petitioner provided photographs to document the contrast between the red, rolling hills of the proposed area with the wider valleys and higher mountains of the surrounding areas.

As described in the petition, the proposed area's northern boundary line excludes Mt. Konocti above its 2,600-foot elevation, Clear Lake at the water line, and all of Anderson Flat with its different soils. The east boundary line excludes the town of Lower Lake, which sits on an alluvial fan, and a steep ridge with older bedrock and different soils. The south boundary generally coincides with the Clear Lake AVA boundary line, but excludes the higher mountains of the Mayacmas Range. The petitioner notes these peaks share a common volcanic heritage with the rolling hills, but contends the steep slopes and high elevations are unsuitable for commercial viticulture. The western boundary excludes Boggs Lake, a large vernal pool, Camelback Ridge, and Mt. Konocti above 2,600 feet.

Soils

Red, volcanic soils cover over 90% of the proposed area, according to the petition, and are composed of Glenview-Bottlerock-Arrowhead, Konocti-Benridge, and Collayomi-Aiken types. All three soil types are red and have a high rock fragment or gravel content. These red, stony soils are a primary factor motivating the recent growth of viticulture within the proposed area, according to the petitioner.

The petition notes that the proposed Red Hills viticultural area's northern boundary is defined by a narrow border of red volcanic soils that lack rock content at Mt. Konocti's 2,600-foot elevation line, Clear Lake's shore line, and a marshy territory with different soils.

The proposed area's eastern boundary follows the edge of the volcanic field. The petitioner contends the red soils outside the field lack rock content.

As petitioned, the proposed viticultural area's southern boundary is defined by the mountainous terrain, which precludes commercial viticulture, even though the volcanic soils extend south past the proposed boundary. Salminas Meadow and Seigler Valley, both within the Clear Lake viticultural area, have been excluded from the proposed Red Hills viticultural area based on their different soils and terrain.

Boggs Lake, some steep ridges, Shaul Valley, and the base of Mt. Konocti mark the proposed area's western boundary. The petitioner states that the ridges outside of the proposed area's southwestern boundary represent the approximate western extent of the prehistoric volcanic flows and mark a change to steeper terrain. The land inside the boundary is geologically younger and has more porous volcanic rocks and soils that contrast with the bedrock of Franciscan formation outside the proposed area. Shaul Valley, a small, bottomland area, has different sandy loam soils. According to the petitioner, Mt. Konocti has never been considered part of the Red Hills area and acts as a dividing point for several distinct areas. Only the low foothills of this mountain are within the proposed area.

Climate

Rainfall in the proposed area is based on its location between the Mayacmas Mountains and Clear Lake. The mountainous region to the south of the proposed gets about 80 inches of rain a year, while Clear Lake to the north averages 22 inches a year. The Red Hills area lies between these two places and receives from 25 to 40 inches of rain a year.

The petitioner contends the proposed Red Hills viticultural area has a distinctive microclimate based on the area's relative lack of coastal influence, at about fifty miles inland, its hilly terrain, and its location between Clear Lake and the Mayacmas Mountains. The unique wind patterns in the Red Hills area result from the lake-land effect, driven by temperature contrasts between the lake and adjacent land, and the mountain-valley effect that pushes air either upward or downward in the valleys depending on temperatures. The petitioner notes that a perpetual motion wind machine is created by the combination of the lake-land and the mountain-valley effects, creating unique wind systems that blow through the Red Hills' open terrain. These constant winds provide natural frost protection for the grapevines. According to the petitioner, local residents confirm that in the early morning hours of cold spring days, when temperatures dip below the freezing point, the naturally generated winds keep frost from forming on grape shoots while other Lake County viticultural areas require frost protection measures.

Proposed Boundaries

The proposed Red Hills viticultural area is in Lake County, California and is entirely within the approved Clear Lake and North Coast viticultural areas. The proposed Red Hills area is an irregular rectangle in shape, with Mt. Konocti to the northwest, Clear Lake to the north, and the Mayacmas Mountains to the south.

The USGS maps required for determining the boundary of the proposed Red Hills viticultural area are: (1) Clearlake Highlands Quadrangle, California—Lake Co., 7.5 Minute Series, edition of 1958, photorevised 1975; (2) Lower Lake Quadrangle, California—Lake Co., 7.5 Minute Series, edition of 1958, photorevised 1975; (3) Whispering Pines Quadrangle, California, 7.5 Minute Series, edition of 1958, photoinspected 1975; and (4) Kelseyville Quadrangle, California—Lake Co., 7.5 Minute Series, edition of 1959, photorevised 1975. A complete description of the proposed area's boundaries is found in the proposed rule text below.

Public Participation

Comments Sought

ATF requests comments from all interested persons. Specifically, ATF requests comments on the potential for name confusion between the proposed Red Hills (plural) viticultural area in Lake County, California, and the proposed Red Hill (singular) viticultural area in Oregon. To resolve this problem, ATF is considering using the names ''Red Hills—California'' and ''Red Hill—Oregon'' for these respective viticultural areas. In both cases the State name would appear in direct conjunction with the viticultural area name. Comments on the proposed names and suggestions for other names are encouraged and will be given consideration.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

ATF will not recognize any submitted material as confidential and comments may be disclosed to the public. Any material that the commenter considers confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Submitting Comments

By U.S. Mail: Written comments may be mailed to ATF at the address listed in the **ADDRESSES** section above.

By Fax: Comments may be submitted by facsimile transmission to (202) 927–8602, provided the comments: (1) Are legible, (2) are 8 ½″ x 11″ in size, (3) contain a written signature, and (4) are five pages or less in length. This limitation is necessary to assure reasonable public access to the equipment. Comments sent by fax in excess of five pages will not be accepted. Receipt of fax transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

By e-mail: Comments may be submitted by e-mail to *nprm@atfhq.treas.gov*. E-mail comments must contain your name, mailing address, e-mail address, and reference this notice number. We will not acknowledge the receipt of e-mail. We will treat comments submitted by e-mail as originals.

Comments may also be submitted using the comment form provided with the online copy of this proposed rule on the ATF Internet Web site at *http://www.atf.treas.gov.*

Public Hearing: Any person who desires an opportunity to comment orally at a public hearing on the proposed regulation should submit his or her request, in writing, to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Reviewing Comments

Copies of the petition, the proposed regulations, the appropriate maps, and any written comments received will be available for public inspection during normal business hours at the ATF Reference Library, Office of the Liaison and Public Information, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202–927–7890. Copies of comments may be requested by writing the ATF librarian at the above address.

For the convenience of the public, ATF will post comments received in response to this notice on the ATF Web site. All comments posted on our web site will show the name of the commenter, but will have street addresses, telephone numbers, and e-mail addresses removed. We may also omit voluminous attachments or material that we do not consider suitable for posting. In all cases, the full comment will be available in the ATF library as noted above. To access online copies of the comments on this rulemaking, visit *http://www.atf.treas.gov,* and select ''Regulations,'' then ''Notices of proposed rulemaking (alcohol),'' and then click on the ''View Comments'' link under this Notice number.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

Regulatory Flexibility Act

ATF certifies that this proposed regulation will not have a significant impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that area.

No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

ATF has determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

Drafting Information

The principal author of this document is N.A. Sutton, Regulations Division (San Francisco), Bureau of Alcohol, Tobacco, and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Subpart C is amended by adding § 9.____ to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.____ Red Hills

(a) *Name.* The name of the viticultural area described in this section is ''Red Hills.''

(b) *Approved Map.* The appropriate maps for determining the boundary of the Red Hills viticultural area are four 1:24,000 Scale U.S.G.S. topography maps. They are titled:

(1) Clearlake Highlands Quadrangle, CA—Lake Co. 1958, photorevised 1975;

(2) Lower Lake Quadrangle, CA—Lake Co. 1958, photorevised 1975;

(3) Whispering Pines Quadrangle, CA 1958, photoinspected 1975;

(4) Kelseyville Quadrangle, CA—Lake Co. 1959, photorevised 1975.

(c) *Boundary.* The Red Hills viticultural area is located entirely within the Clear Lake viticultural area of Lake County, California, on the south shore of Clear Lake, between the towns of Lower Lake and Kelseyville, CA. The point of beginning is the intersection of the Clear Lake shoreline, south of Slater Island, with the common boundary line between Sections 3 and 4, T12N, R7W (Clearlake Highlands Quadrangle).

(1) Then proceed straight south along the common boundary line of Sections 3 and 4, T12N, R7W to its intersection with the 1,400-foot contour line, Section 3, T12N, R7W (Clearlake Highlands Quadrangle);

(2) Then proceed southeast along the 1,400-foot contour line onto the Lower Lake Quadrangle map south of Anderson Flat, reverse direction with the contour line, and continue west to its intersection with Seigler Canyon Creek, Section 10, T12N, R7W (Clearlake Highlands Quadrangle);

(3) Then proceed west along Seigler Canyon Creek to its confluence with Perini Creek, and continue south along Perini Creek to its intersection with the 1,800-foot contour line, Section 16, T12N, R7W (Clearlake Highlands Quadrangle);

(4) Then proceed in a generally southern direction and then generally west along the 1,800-foot contour line to its intersection with Copsey Creek, Section 28, T12N, R7W (Whispering Pines Quadrangle);

(5) Then proceed west along Copsey Creek to its headwaters in Section 29, and continue straight westerly to the headwaters of Bad Creek at its intersection with the Section 30 east boundary line, T12N, R7W (Whispering Pines Quadrangle);

(6) Then proceed due west to the intersection of Big Canyon Road, Section 30, T12N, R7W (Whispering Pines Quadrangle);

(7) Then proceed north along Big Canyon Road to its intersection with Loch Lomond Road, Section 19, T12N, R7W (Clearlake Highlands Quadrangle);

(8) Then proceed southwest along Loch Lomond Road to its first intersection with the 2,640-foot contour line, Section 25, T12N, R8W (Whispering Pines Quadrangle);

(9) Then proceed northwest in a straight line to Seigler Mountain, elevation 3,692 feet, and continue northwest along the same line of direction to its intersection with Salmina Road, Section 23, T12N, R8W (Clearlake Highlands Quadrangle);

(10) Then proceed north along Salmina Road to its intersection with Highway 175, reverse direction and continue south along Highway 175 to its intersection with the Section 15 south boundary line, T12N, R8W, (Clearlake Highlands Quadrangle);

(11) Then proceed straight northwest to Mt. Hannah, elevation 3,978 feet, Section 16, T12N, R8W, (Clearlake Highlands Quadrangle);

(12) Then proceed straight southwest to the intersection of the 3,000-foot contour line with the Section 17 east boundary line, and continue along the same line of direction to the 2,800-foot contour line east of Boggs Lake, Section 17, T12N, R8W (Kelseyville Quadrangle);

(13) Then proceed north and west along the 2,800-foot contour line around Boggs Lake to its intersection with Harrington Flat Road, Section 18, T12N, R8W (Kelseyville Quadrangle);

(14) Then proceed north along Harrington Flat Road to its intersection with Bottle Rock Road, and continue north along Bottle Rock Road to its intersection with an unnamed unimproved dirt road, just inside Section 1, T12N, R9W (Kelseyville Quadrangle);

(15) Then proceed northwest along the unimproved dirt road to Boundary Marker 2080, Section 1, T12N, R9W (Kelseyville Quadrangle);

(16) Then proceed straight northeast to Mt. Olive, elevation 2,485 feet, and continue along the same line of direction an unnamed peak, elevation 2,295 feet, Section 30, T13N, R8W (Kelseyville Quadrangle);

(17) Then proceed straight northeast to the intersection of the 2,600-foot contour line with the Section 19 east boundary line, T13N, R8W (Kelseyville Quadrangle);

(18) Then proceed northwest along the 2,600-foot contour line to its intersection with an unnamed stream and Section 20 west boundary line, T13N, R8W (Kelseyville Quadrangle);

(19) Then proceed straight northeast to the intersection of Konocti Bay Road and Soda Bay Road, and continue due east to the shore of Clear lake, Section 22, T13N, R8W (Clearlake Highlands Quadrangle);

(20) Then proceed southeast along the shoreline of Clear Lake, returning to the point of beginning at its intersection with the common boundary line between Sections 3 and 4, T12N, R7W (Clearlake Highlands Quadrangle).

Signed: September 4, 2002.

Bradley A. Buckles,

Director.

[FR Doc. 02–27443 Filed 10–29–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 02–019]

RIN 2115–AA97

Security Zones; San Francisco Bay, California

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish moving and fixed security zones extending 100 yards around and under all cruise ships and tank vessels that enter, are moored in, anchored in or depart from the San Francisco Bay, California, and Delta ports. These proposed security zones are needed for national security reasons to protect the public and ports from potential terrorist acts. Entry into these zones will be prohibited unless specifically authorized by the Captain of the Port San Francisco Bay.

DATES: Comments and related material must reach the Coast Guard on or before November 29, 2002.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California 94501. The Waterways Management Branch maintains the public docket for this rulemaking. Comments and

material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Waterways Management Branch between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Diana Cranston, Chief, Waterways Management Branch U.S. Coast Guard Marine Safety Office San Francisco Bay, (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP San Francisco Bay 02–019), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8 1/2 by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

In our final rule, we will include a concise general statement of the comments received and identify any changes from the proposed rule based on the comments. If as we anticipate, we make the final rule effective less than 30 days after publication in the **Federal Register**, we will explain our good cause for doing so as required by 5 U.S.C. 553(d)(3).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Management Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

Since the September 11, 2001, terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia, and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and growing tensions in Iraq have made it prudent for U.S. ports to be on a higher state of alert because the Al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Magnuson Act (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of Title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns, and to take steps to prevent the catastrophic impact that a terrorist attack against a cruise ship and/or tank vessel would have on the public interest, the Coast Guard proposes to establish permanent security zones around and under cruise ships and tank vessels entering, departing, or moored within the San Francisco Bay and Delta ports. These security zones will help the Coast Guard prevent vessels or persons from engaging in terrorist actions against cruise ships and tank vessels. Due to these heightened security concerns, and the catastrophic impact a terrorist attack on a cruise ship and/or tank vessel would have on the multiple passengers on board and surrounding area and communities, security zones are prudent for these types of vessels.

On December 21, 2001, we issued a rule under docket COTP San Francisco Bay 01–012, and published that rule in the **Federal Register** (67 FR 7611, February 20, 2002) creating temporary section 165.T11–098 of Title 33 of the Code of Federal Regulations (CFR). Under temporary section 165.T11–098, which expired at 11:59 p.m. PDT on June 21, 2002, the Coast Guard established 100-yard security zones around all cruise ships and tank vessels that entered, were moored in, or departed from the San Francisco Bay and Delta ports.

On June 12, 2002, a change in effective period temporary rule was issued, under docket COTP San Francisco Bay 02–012 and was published in the **Federal Register** (67 FR 42486, June 24, 2002), under the same previous temporary section 165.T11–098, which is set to expire at 11:59 p.m. on December 21, 2002. The Captain of the Port has determined the need for continued security regulations exists. The proposed regulation differs slightly from temporary section 165.T11–098. Although, while implicit in the temporary rule, the security zones proposed here will be described as extending from the water's surface to the sea floor. This more specific description is intended to discourage unidentified scuba divers and swimmers from coming within close proximity of cruise ships and/or tank vessels. Accordingly, this rulemaking proposes to make permanent the temporary security zones established on December 21, 2001, under docket number COTP SFB 01–012, 33 CFR 165.T11–098 published in the **Federal Register** on February 20, 2002 (67 FR 7611). The effective period of that temporary rule was extended until December 21, 2002, by another rule published in the **Federal Register** on June 24, 2002 (67 FR 42486).

Discussion of Proposed Rule

The Coast Guard proposes to establish moving and fixed security zones around all cruise ships and tank vessels that are anchored, moored, or underway within the San Francisco Bay and Delta ports. These proposed security zones are activated when any cruise ship and/or tank vessel passes the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46′9″ N, 122°35′4″ W and 37°46′5″ N, 122°35′2″ W, respectively). This proposed rule, for security concerns, prohibits entry of any vessel inside the security zone surrounding a cruise ship and/or tank vessel. These security zones are within a 100-yard radius around any cruise ship and/or tank vessel that is anchored at a designated anchorage; that is moored, or in the process of mooring, at any berth within the San Francisco Bay and Delta port areas; and that is underway.

These security zones are needed for national security reasons to protect cruise ships, tank vessels, the public, transiting vessels, adjacent waterfront facilities, and the ports from potential subversive acts, accidents, or other events of a similar nature. Entry into these zones will be prohibited unless specifically authorized by the Captain of the Port or his designated representative. Vessels already moored or anchored when these security zones

take effect are not required to get underway to avoid either the moving or fixed zones unless specifically ordered to do so by the Captain of the Port or his designated representative.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Pursuant to 33 U.S.C. 1232 and 33 CFR part 27, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years.

Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States; a maximum criminal fine of $10,000; and imprisonment up to 10 years.

The Captain of the Port will enforce these zones and may request the use of resources and personnel of other government agencies to assist in the patrol and enforcement of the regulation. The Captain of the Port retains discretion to initiate Coast Guard civil penalty action against non-compliant parties pursuant to the PWSA, or, refer appropriate cases to the cognizant U.S. Attorney Office for disposition. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 33 U.S.C. 1231.

Regulatory Evaluation

This proposed 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).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The effect of this regulation will not be significant because the zones will encompass only a small portion of the waterway. Furthermore, vessels will be able to pass safely around the zones, and may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port, or his designated representative.

The sizes of the zones are the minimum necessary to provide adequate protection for the cruise ships and laden tank vessels, their crews and passengers, other vessels operating in the vicinity of the cruise ships and laden taken ships and their crews, adjoining areas, and the public. The entities most likely to be affected are commercial vessels transiting the main ship channel *en route* the San Francisco Bay and Delta ports and pleasure craft engaged in recreational activities and sightseeing. The security zones will prohibit any commercial vessels from meeting or overtaking a cruise ship and/or a tank ship in the main ship channels, effectively prohibiting use of the channels. However, the moving security zones will only be effective during cruise ship and tank ship transits, which will last for approximately 30 minutes. In addition, vessels are able to safely transit around the zones while a vessel is moored or at anchor in the San Francisco Bay and Delta ports.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. We expect this proposed rule may affect the following entities, some of which may be small entities: The owners and operators of private and commercial vessels intending to transit or anchor in these small portions of the cruise ships and tank ships covered by these security zones. The impact to these entities would not be significant since these zones are proposed to encompass only small portions of the waterway for limited period of times while the cruise ships and/or tank ships are transiting, moored, or in anchorage. Delays, if any, are expected to be less than thirty minutes in duration.

Small vessel traffic can pass safely around the area and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zone to engage in these activities. When a cruise ship or tank ship is at anchor, vessel traffic will have ample room to maneuver around the security zone. The outbound or inbound transit of a cruise ship or tank ship will last about 30 minutes. Although this regulation prohibits simultaneous use of portions of the channel, this prohibition is of short duration. While a cruise ship or tank vessel is moored, commercial traffic and small recreational traffic will have an opportunity to coordinate movement through the security zone with the COTP or his or her designated representative.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Diana Cranston, Chief, Waterways Management Division, (510) 437–3073.

Collection of Information

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

Federalism

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 proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not 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 proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

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.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because we are proposing to establish security zones. A ''Categorical Exclusion Determination'' is 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 proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.1183 to read as follows:

§ 165.1183 Security Zones; Cruise Ships and Tank Vessels, San Francisco Bay and Delta ports, California

(a) *Definition.* ''Cruise ship'' as used in this section means a passenger vessel, except for a ferry, over 100 feet in length, authorized to carry more than 12 passengers for hire; making voyages lasting more than 24 hours, any part of which is on the high seas; and for which passengers are embarked or disembarked in the San Francisco Bay and Delta ports.

(b) *Location.* The following areas are security zones:

(1) All waters, extending from the surface to the sea floor, within a 100-yard radius around any cruise ship and tank ship that is anchored at a designated anchorage within the San Francisco Bay and Delta port areas shoreward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9′ N, 122°35.4′ W and 37°46. 5′ N, 122°35.2′ W, respectively);

(2) The shore area and all waters, extending from the surface to the sea floor, within a 100-yard radius around any cruise ship and tank ship that is moored, or in the process of mooring, at any berth within the San Francisco Bay and Delta port areas shoreward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9′ N, 122°35.4′ W and 37°46.5′ N, 122°35.2′ W, respectively); and

(3) All waters, extending from the surface to the sea floor within a 100-yard radius around any cruise ship and/or tank ship that is underway shoreward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 and 4195, positions 37°46.9′ N, 122°35.4′ W and 37°46.5′ N, 122°35.2′ W, respectively).

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, San Francisco Bay, or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 510–437–3073 or on VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(3) When a cruise ship or tank vessel approaches within 100 yards of a vessel that is moored, or anchored, the stationary vessel must stay moored or anchored while it remains within the cruise ship's or tank vessel's security zone unless it is either ordered by, or given permission from, the COTP San Francisco Bay to do otherwise.

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

(e) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone by state and local law enforcement agencies as necessary.

Dated: October 10, 2002.

G.M. Swanson,

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

[FR Doc. 02–27528 Filed 10–29–02; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 253

[Docket No. 2002–4 CARP NCBRA]

Noncommercial Educational Broadcasting Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is publishing negotiated rate adjustments, under the Copyright Act, for the noncommercial educational broadcasting compulsory license for the period 2003 through 2007. The proposed rate adjustments shall become final unless one or more parties with a significant interest in the rates notifies the Office that it will litigate the rate adjustment before a Copyright Arbitration Royalty Panel (''CARP'').

DATES: Notices of Intent to Participate in a CARP proceeding are due on or before December 2, 2002.

ADDRESSES: If sent by mail, an original and five copies of Notices of Intent to Participate should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, an original and five copies of Notices of Intent to Participate should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William J. Roberts, Jr., Senior Attorney, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone (202) 707–8380. Telefax: (202) 252–3423

SUPPLEMENTARY INFORMATION:

Background

Section 118 of the Copyright Act, 17 U.S.C., creates a compulsory license for the use of certain copyrighted works in connection with noncommercial broadcasting. Terms and rates for this compulsory license applicable to parties who are not subject to privately negotiated licenses are published in 37 CFR part 253 and are subject to adjustment at five-year intervals. This is a window year for such an adjustment.

On April 1, 2002, the Library of Congress published a notice in the **Federal Register** announcing a voluntary negotiation period for adjustment of the section 118 rates and requested interested parties to submit their Notices of Intent to Participate in a CARP proceeding. The Library also announced the schedule for the precontroversy discovery period should a CARP proceeding be necessary. 67 FR 15414 (April 1, 2002). The Library received Notices of Intent to Participate from the following users of the section 118 license: National Public Radio (''NPR''); the Public Broadcasting System (''PBS''); the Corporation for Public Broadcasting (''CPB''); the American Council on Education (''ACE''); the National Religious Broadcasters Music License Committee (''NRBMLC''); the National Federation of Community Broadcasters (''NFCB''); and WCPE-FM. The Library received Notices of Intent to Participate from the following copyright owners whose works are subject to use under section 118: the American Society of Composers, Authors and Publishers (''ASCAP''); Broadcast Music, Inc. (''BMI''); SESAC, Inc. (''SESAC''); the National Music Publishers Association (''NMPA''); and the Harry Fox Agency, Inc. (''HFA'').

Not long after the issuance of the April 1 Notice, representatives of the above-listed parties informed the Library that settlement negotiations were proceeding well and, in the interest of avoiding a CARP proceeding, requested additional time to negotiate. On June 19, 2002, the Library granted their request and issued an order directing them to submit their voluntary agreements and proposals for adjustment of the section 118 rates and terms by July 1, 2002. The Library also requested those not reaching a settlement by this date to identify themselves for purposes of scheduling a CARP proceeding. Fortunately, settlements were reached by all the parties.

This Notice

The Library has received voluntary license agreements for rates and terms under the section 118 license, and proposals to adjust the section 118 rates and terms in 37 CFR part 253. There is a distinction between voluntary agreements and proposals. Section 118(b) of the Copyright Act provides that ''any owners of copyright in published nondramatic musical works and published pictorial, graphic, and sculptural works and any public broadcasting entities, respectively, may negotiate and agree upon the terms and rates of royalty payments * * *'' provided that ''copies of such agreements are filed in the Copright Office within thirty days of execution * * *'' 17 U.S.C. 118(b)(1)&(2). A particular copyright owner may negotiate with a particular public broadcasting entity for the use of that copyright owners works, and that agreement governs the royalty fees and terms of payment to be made by the public broadcasting entity provided that the agreement is deposited with the Copyright Office. However such an agreement would not govern the rates to be paid by another public broadcasting entity not party to the agreement.

The statute provides that for those copyright owners and public broadcasting entities not subject to an agreement, the Librarian shall convene a CARP ''to determine and publish in the **Federal Register** a schedule of rates and terms which * * * shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities. * * *'' 17 U.S.C. 118(b)(3). Where the parties in this proceeding have not been able to negotiate license agreements, due to the fact that either the copyright owners or the users of the works affected by section 118 have not participated in negotiations (*i.e.* they are not parties to this proceeding), the parties have proposed adjustments to the section 118 rates and terms for these works. These proposals are subject to § 251.63(b) of the CARP rules, which provides that ''[i]n the case of a settlement among the parties to a proceeding, the Librarian may, upon the request of the parties, submit the agreed upon rate to the public in a notice-and-comment proceeding. The Librarian may adopt the rate embodied in the proposed settlement without convening an arbitration panel, provided that no opposing comment is received by the Librarian from a party with an intent to participate in a CARP proceeding.'' 37 CFR 251.63(b).

The Librarian will adopt the negotiated and proposed section 118 rates and terms for the period 2003 through 2007 unless one or persons objects on or before December 2, 2002. However, a simple objection to a proposed rate or term is not sufficient. As provided by § 251.63(b) of the CARP rules, an objecting party must file a Notice of Intent to Participate in a CARP proceeding along with its objection and must be prepared to participate fully in a CARP proceeding to adjust the rates and/or terms to which it objects. Furthermore, the objecting party must have a significant interest in the rates and/or terms to which it is objecting to be eligible to participate in the CARP proceeding.

Summary of Adjustments to 37 CFR Part 253

Part 253 of the CARP rules sets forth the rates and terms for the section 118 license. These regulations are quite lengthy. Rather than republish the entire text of these regulations, the Library is only printing those portions that will be changed as a result of the parties agreements and proposals. The following is a section-by-section summary of the proposed changes.

1. Section 253.1 General

Section 253.1 will be amended to reflect that the rates and terms set forth in part 253 of 37 CFR will apply for the period beginning January 1, 2003, and ending December 31, 2007.

2. Section 253.2 Definition of public broadcasting entity

No change.

3. Section 253.3 Performance of musical compositions in the repertory of ASCAP and BMI by PBS and NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(d).

ASCAP and BMI have negotiated voluntary agreements with PBS, NPR, and CPB pursuant to 17 U.S.C. 118(b). PBS/NPR/CPB represent (a) PBS; (b) PBS member television stations; (c) noncommercial television stations unaffiliated with PBS but eligible for CPB funding; (d) NPR; (e) NPR affiliated radio stations; and (f) noncommercial radio stations unaffiliated with NPR but eligible for CPB funding. Because these organizations are covered by voluntary licenses, there is no longer need for this section, and the Library is proposing that it be deleted.

4. Section 253.4 Performance of musical compositions by PBS, NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(d).

This section sets forth the rates applicable to public broadcasters who perform the musical compositions of copyright owners who are not represented by ASCAP, BMI, SESAC, HFA or the NMPA. For these unaffiliated copyright owners, PBS/NPR/CPB propose the following new rates:

a. For performance of a nondramatic musical composition in a feature presentation of PBS: $224.22, up from $211.53.

b. For performance of a nondramatic musical composition as background or theme music in a PBS program: $56.81, up from $53.59.

c. For performance of a nondramatic musical composition in a feature presentation of a station of PBS: $19.16, up from $18.08

d. For performance of a nondramatic musical composition as background or theme music in a program of a station of PBS: $4.04, up from $3.81.

e. For performance of a nondramatic musical composition in a feature presentation of NPR: $22.73, up from $21.44.

f. For performance of a nondramatic musical composition as background or theme music in a NPR program: $5.51, up from $5.20.

g. For performance of a nondramatic musical composition in a feature presentation of a station of NPR: $1.61, up from $1.52.

h. For performance of a nondramatic musical composition as background or theme music in a program of a station of NPR: $.57, up from $.54.

PBS/NPR/CPB also propose to amend subsection (d) to permit the rates set forth above to be applicable to the performance of a television or radio program for a period of four years after the first performance of the program, rather than the current three-year limitation.

5. Section 253.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities

This section is applicable to the performance of musical compositions by colleges, universities and other nonprofit educational institutions which are not affiliated with NPR. ASCAP, BMI and SESAC, in negotiation with ACE and NRBMLC, propose the following adjustments for the use of music in their repertories.[1] For ASCAP compositions, the proposal is that the current rate of $244 per year be adjusted by the change in the cost of living as determined by the Consumer Price Index (''CPI'') during the period from the most recent Index published prior to December 1, 2002, to the most recent Index published prior to December 1, 2003. A cost of living adjustment would then be performed each year thereafter through 2007. The proposal is the same for BMI compositions: $244 per year adjusted by the annual change in the CPI through 2007. For SESAC compositions, the proposal is $80 per year, up from $66, with the annual CPI adjustment through 2007.

[1] NFCB supports these rates as well.

6. Section 253.6 Performance of musical compositions by other public broadcasting entities

This section applies to the performance of nondramatic musical compositions by radio stations not licensed to colleges, universities or other nonprofit educational institutions and which are not affiliated with NPR. NRBMLC and NFCB have reached an agreement with the copyright owners in this proceeding and propose the following adjustments.

For performance of all the compositions in the repertory of ASCAP: $460 in 2003; $475 in 2004; $495 in 2005; $515 in 2006; and $535 in 2007. The same rates are proposed for the performance of all compositions in the repertory of BMI. For performance of all compositions in the repertory of SESAC: $98 in 2003; $100 in 2004; $102 in 2005; $104 in 2006; and $106 in 2007. NRBMLC also proposes that the rate of $1 for performance of a composition of an unaffiliated copyright owner remain in effect for the 2003–2007 period.

7. Section 253.7 Recording rights, rates and terms

This section establishes rates and terms for the recording of nondramatic performances and displays of musical works on or for the radio and television programs of public broadcasting entities, whether or not in synchronization or timed relationship with the visual or aural content, and for the making, reproduction and distribution of copies and phonorecords of public broadcasting programs containing such nondramatic performances and displays of musical works solely for the purpose of transmission by public broadcasting entities.

PBS/NPR/CPB propose the following rate adjustments:

a. For use of a musical work in a PBS-distributed program

(i) Feature: $112.40, up from $106.04;

(ii) Concert feature (per minute): $33.75, up from $31.84;

(iii) Background: $56.81, up from $53.59;

(iv) Theme:

Single program or first series: $56.81, up from $53.59

Other series program: $23.06, up from $21.75.

b. For use of a musical work other than in a PBS-distributed program

(i) Feature: $9.29, up from $8.76;

(ii) Concert feature (per minute): $2.44, up from $2.30;

(iii) Background: $4.04, up from $3.81;

(iv) Theme:

Single program or first series program: $4.04, up from $3.81;

Other series program: $1.61, up from $1.52.

c. For use of a musical work in a NPR program

(i) Feature: $12.17, up from $11.48;

(ii) Concert feature (per half hour): $17.86, up from $16.85;

(iii) Background: $6.10, up from $5.75;

(iv) Theme:

Single program or first series program: $6.10, up from $5.75;

Other series program: $2.43, up from $2.29.

d. For use of a musical work other than in a NPR-produced program:

(i) Feature: $.78, up from $.74;

(ii) Feature (concert)(per half hour): $1.63, up from $1.54;

(iii) Background: $.39, up from $.37.

This schedule of fees would cover use of musical works for a period of three years following the first use. Succeeding use would require an additional payment. For an additional use of one year, twenty-five percent of the initial three-year fee. For a second three-year period, fifty percent of the initial three-year fee. For each three-year period thereafter, twenty-five percent of the initial three-year fee.

In addition, PBS/NPR/CPB request that the proposed rates apply to a ''use'' of a musical work, as opposed to the ''broadcast'' of a musical work as described in the current regulations.

8. Section 253.8 Terms and rates of royalty payments for the use of published pictorial, graphic, and sculptural works

This section establishes rates and terms for use of published pictorial, graphic and sculptural works by public broadcasting entities. PBS/NPR/CPB propose the following rate adjustments:

a. For use of a work in a PBS-distributed program:

(i) For a featured display of a work: $68.67, up from $64.78;

(ii) For background and montage display: $33.49, up from $31.59;

(iii) For use of a work for program identification or for thematic use: $135.37, up from $127.71;

(iv) For display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced, irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of the schedule: $44.47, up from $41.95.

b. For use of a work in other than a PBS-distributed program:

(i) For a featured display of a work: $44.47, up from $41.95;

(ii) For background and montage display: $22.80, up from $21.51;

(iii) For use of a work for program identification or for thematic use: $90.91, up from $85.76;

(iv) For display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced, irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of the schedule: $22.80, up from $21.51.

This schedule of fees would cover the use of works for a period of three years from the date of their first use. Succeeding use would require an additional payment. For an additional use of one year, twenty-five percent of the initial three-year fee. For a second three-year period of use, fifty percent of the initial three-year fee. For each three year period thereafter, twenty-five percent of the initial three-year fee.

9. Section 253.9 Unknown copyright owners

No change.

10. Section 253.10 Cost of living adjustment

The dates in this section would be changed to reflect the annual cost of living adjustment for the rates in § 253.5 for the new 2003–2007 period.

11. Section 253.11 Notice of restrictions on use of reproductions of transmission programs

No change.

List of Subjects in 37 CFR Part 253

Copyright, Music, Radio, Television, Rates.

Proposed Regulations

For the reasons set out in the preamble, the Copyright Office proposes amending part 253 of 37 CFR as follows:

PART 253—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

1. The authority citation for part 253 continues to read as follows:

Authority: 17 U.S.C. 118, 801(b)(1) and 803.

2. Section 253.1 is amended by removing the phrase ''January 1, 1998 and ending on December 31, 2002'' and adding ''January 1, 2003 and ending on December 31, 2007'' in its place.

3. Section 253.3 is removed and reserved.

4. Section 253.4 is amended as follows:

a. In the introductory text, by removing '', or compositions in the repertories of ASCAP, BMI, or SESAC which are licensed on terms and conditions established by a duly empowered Copyright Arbitration Royalty Panel pursuant to the procedures set forth in subchapter B of 37 CFR, part 251.'';

b. by revising paragraph (a);

c. in paragraph (c), by removing the phrase ''January 1, 1998, to December 31, 2002'' and adding ''January 1, 2003, to December 31, 2007'' in its place; and

d. in paragraph (d), by removing ''three'' and adding ''four'' in its place.

The revisions to § 253.4 read as follows:

§ 253.4 Performance of musical compositions by PBS, NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(d).

* * * * *

(a) Determination of royalty rate. (1) For performance of such work in a feature presentation of PBS:

2003–2007 ..... $224.22

(2) For performance of such a work as background or theme music in a PBS program:

2003–2007 ..... $56.81

(3) For performance of such a work in a feature presentation of a station of PBS:

2003–2007 ..... $19.16

(4) For performance of such a work as background or theme music in a program of a station of PBS:

2003–2007 ..... $4.04

(5) For the performance of such a work in a feature presentation of NPR:

2003–2007 ..... $22.73

(6) For the performance of such a work as background or theme music in an NPR program:

2003–2007 ..... $5.51

(7) For the performance of such a work in a feature presentation of a station of NPR:

2003–2007 ..... $1.61

(8) For the performance of such a work as background or theme music in a program of a station of NPR:

2003–2007 ..... $.57

(9) For purposes of this schedule the rate for the performance of theme music in an entire series shall be double the single program theme rate.

(10) In the event the work is first performed in a program of a station of PBS or NPR, and such program is subsequently distributed by PBS or NPR, an additional royalty payment shall be made equal to the difference between the rate specified in this section for a program of a station of PBS or NPR, respectively, and the rate specified in this section for a PBS or NPR program, respectively.

* * * * *

5. Section 253.5(c)(3) is amended by removing ''$66'' and adding ''$80'' in its place.

6. Section 253.6(c) is revised to read as follows:

§ 253.6 Performance of musical compositions by other public broadcasting entities.

* * * * *

(c) *Royalty rate.* A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, in 2003, $460; in 2004, $475; in 2005, $495; in 2006, $515; in 2007, $535.

(2) For all such compositions in the repertory of BMI, in 2003, $460; in 2004, $475; in 2005, $495; in 2006, $515; in $2007, $535.

(3) For all such compositions in the repertory of SESAC, in 2003, $98; in 2004, $100; in 2005, $102; in 2006, $104; in 2007, $106.

(4) For the performance of any other such compositions, in 2003 through 2007, $1.

* * * * *

7. Section 253.7 is amended as follows:

a. in paragraph (a), by removing ''or compositions represented by the Harry Fox Agency, Inc., SESAC, and/or the National Music Publishers Association and which are licensed on terms and conditions established by a duly empowered Copyright Arbitration Royalty Panel pursuant to the procedures set forth in this subchapter,''; and

b. by revising paragraph (b).

The revisions to § 253.7 read as follows:

§ 253.7 Recording rights, rates and terms.

* * * * *

(b) *Royalty rate.* (1)(i) For uses described in paragraph (a) of this section of a musical work in a PBS-distributed program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in that PBS-distributed program:

2003–2007	
Feature	$112.40
Concert feature (per minute)	33.75
Background	56.81
Theme:	
Single program or first series program	56.81
Other series program	23.06

(ii) For such uses other than in a PBS-distributed television program, the royalty fee shall be calculated by multiplying the following per-composition rates by the number of different compositions in that program:

2003–2007	
Feature	$9.29
Concert feature (per minute)	2.44
Background	4.04
Theme:	
Single program or first series program	4.04
Other series program	1.61

(iii) In the event the work is first recorded other than in a PBS-distributed program, and such program is subsequently distributed by PBS, an additional royalty payment shall be made equal to the difference between the rate specified in this section for other than a PBS-distributed program and the rate specified in this section for a PBS-distributed program.

(2) For uses licensed herein of a musical work in a NPR program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in any NPR program distributed by NPR. For purposes of this schedule ''National Public Radio'' programs include all programs produced in whole or in part by NPR, or by any NPR station or organization under contract with NPR.

2003–2007	
Feature	$12.17
Concert feature (per minute)	17.86
Background	6.10
Theme:	
Single program or first series program	6.10
Other series program	2.43

(3) For purposes of this schedule, a ''Concert Feature'' shall be deemed to be the nondramatic presentation in a program of all or part of a symphony, concerto, or other serious work originally written for concert performance or the nondramatic presentation in a program of portions of a serious work originally written for opera performance.

(4) For such uses other than in a NPR-produced radio program:

2003–2007	
Feature	$.78
Feature (concert) (per half hour)	1.63
Background	.39

(5) The schedule of fees covers use for a period of three years following the first use. Succeeding use periods will require the following additional payment: additional one year period—25 percent of the initial three year fee; second three year period—50 percent of the initial three year fee; each three year fee thereafter—25 percent of the initial three year fee; provided that a 100 percent additional payment prior to the expiration of the first three year will cover use during all subsequent use periods without limitation. Such succeeding uses which are subsequent to December 31, 2007, shall be subject to the royalty rates established in this schedule.

* * * * *

8. Section 253.8 is amended by revising paragraphs (b)(1) and (f)(1) to read as follows:

§ 253.8 Terms and rates of royalty payments for the use of published pictorial, graphic, and sculptural works.

* * * * *

(b) * * * (1) The following schedule of rates shall apply to the use of works within the scope of this section:

(i) For such uses in a PBS-distributed program:

2003–2007	
(A) For featured display of a work	$68.67
(B) For background and montage display	33.49
(C) For use of a work for program identification or for thematic use	135.37
(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of the schedule	44.47

(ii) For such uses in other than PBS-distributed programs:

2003–2007	
(A) For featured display of a work	$44.47
(B) For background and montage display	22.80
(C) For use of a work for a program identification or for thematic use	90.91
(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of this schedule	22.80

* * * * *

(f) * * * (1) The rates of this schedule are for unlimited use for a period of three years from the date of the first use of the work under this schedule. Succeeding use periods will require the following additional payment: additional one year period—25 percent of the initial three year fee; second three year period—50 percent of the initial three year fee; each three year period thereafter—25 percent of the initial three year fee; provided that a 100 percent additional payment prior to the expiration of the first three year period

will cover use during all subsequent use periods without limitation. Such succeeding uses which are subsequent to December 31, 2007, shall be subject to the rates established in this schedule.

* * * * *

9. In § 253.10, the first sentence in paragraph (a) is revised to read:

§ 253.10 Cost of living adjustment.

(a) On December 1, 2003, the Librarian of Congress shall publish in the **Federal Register** a notice of the change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published prior to December 1, 2002, to the most recent Index published prior to December 1, 2003. * * *

* * * * *

Dated: October 22, 2002.

David O. Carson,

General Counsel.

[FR Doc. 02–27364 Filed 10–29–02; 8:45 am]

BILLING CODE 1410–33–P

POSTAL SERVICE

39 CFR Part 111

Label Standards for Combined or Copalletized Periodicals Mailings

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes revisions to the *Domestic Mail Manual* (DMM) that would clarify when it is permissible to use the designation ''NEWS'' rather than the class designation ''PER'' on Line 2 (the content line) of labels that identify sacks, trays, and pallets containing copies of Periodicals publications or editions in combined mailings or in copalletized mailings.

Current label standards in DMM M031.1.7 provide that ''NEWS'' may be used on labels for sacks, trays, or pallets for a Periodicals publication only if either one of the following two conditions can be met:

(1) The Periodicals publication is published weekly or more frequently.

(2) The Periodicals publication has been continuously authorized such newspaper treatment since March 1, 1984 or earlier, regardless of publication frequency.

Combined mailings and copalletized mailings, however, often consist of copies that would be eligible for the designation ''NEWS'' on the container label and other copies that would be eligible only for the designation ''PER'' on the container label. This proposed rule would provide the following standards for the application of these two designations in such cases:

• If at least 51% of the total number of copies (not number of addressed pieces) in the combined or copalletized mailing can qualify for ''NEWS'' treatment, then all containers or pallets in such a mailing are labeled ''NEWS.''

• If less than 51% of the total number of copies in the combined or copalletized mailing can qualify for ''NEWS'' treatment, then all containers or pallets in such a mailing are labeled ''PER.''

This proposed revision is prompted by changes to mailing standards evolving since 1991 that have added options so that mailers can prepare and consolidate larger volumes of Periodicals mail into a single production mailstream. These consolidations represent an effective means for Periodicals mailers and the Postal Service to improve customer service, promote greater production efficiencies, reduce the number of containers used to prepare mailings, and stabilize rates by eliminating additional mail processing steps. The Postal Service therefore is proposing a special provision for labeling consolidated Periodicals mailings.

This proposed rule would also clarify DMM E230 to identify the two different methods under which a Periodicals combined mailing may be prepared and to note the requirements for submitting postage statements under each method.

DATES: Submit comments on or before November 29, 2002.

ADDRESSES: Mail or deliver written comments to the Manager, Mail Preparation and Standards, U.S. Postal Service, 1735 N. Lynn Street, Room 3025, Arlington, VA 22209–6038. Written comments may be submitted also via fax to 703–292–4058. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Postal Service Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor North, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Neil Berger at (703) 292–3645, Jane Stefaniak at (703) 292–3548, or Marc McCrery at (202) 268–2704.

SUPPLEMENTARY INFORMATION: ''NEWS''—a designation for ''newspaper''—is printed as part of the information on Line 2 (the content line) of sack, tray, and pallet labels. That information line generally identifies class of mail, mail processing category (such as letter-size mail or flat-size mail), presort level (such as 5-digit or 3-digit), as well as automation or nonautomation status (such as barcoded or nonbarcoded), or type of carrier route sortation, as applicable.

For Periodicals publications, these container labels are affixed by the mailer to pallets or inserted into label holders attached to sacks and trays to identify and distinguish ''PER'' publications and ''NEWS'' publications. For those subscribing to ''NEWS'' publications, the information and articles presented within those publications has an important value that requires both timeliness and predictability of delivery.

Use of ''NEWS'' and ''PER'' Designations

For this purpose, the ''NEWS'' designation helps the Postal Service ensure consistent service and handling for such Periodicals publications from entry into the mailstream, through successive operations in mail processing, to delivery to the intended recipient.

Current label standards in DMM M031.1.7 provide that ''NEWS'' may be printed on labels for sacks, trays, or pallets for a Periodicals publication only if either one of the following two conditions is met:

(1) The Periodicals publication is published weekly or more frequently.

(2) The Periodicals publication has been continuously authorized such newspaper treatment since March 1, 1984, or earlier, regardless of publication frequency.

''PER''—designation for the class name ''Periodicals''—is printed as part of the information on Line 2 (the content line) of mail processing labels. These labels are affixed by the mailer to pallets or inserted into label holders attached to sacks and trays to identify Periodicals publications that do not meet either of the conditions required for the use of the ''NEWS'' designation.

The use of these two distinct designations is carried forward for all container labeling, with two separate but parallel series of three-digit content identifier numbers (CINs). One series is for those publications qualified to use ''NEWS,'' and the second series is for those publications that must use ''PER.'' Each series contains nearly 50 different CINs to meet all possible rate combinations available and all permitted containers.

Combined and Copalletized Mailings

Mailing standards have been introduced over the years to promote the consolidation of different Periodicals publications or different

editions of the same publication into larger volume mailings. These standards, however, have not prevented customers from combining copies labeled as ''PER'' with copies labeled as ''NEWS'' as a way to improve the depth of sort and to reduce the overall number of containers prepared.

Although current standards specify when a Periodicals publication may be classified and labeled as ''NEWS'' and when it must be labeled as ''PER,'' language does not exist to specify the labeling designation to be used when these two types are combined or copalletized.

The Postal Service is proposing use of the designation ''NEWS'' on the content line for sack, tray, or pallet labels for combined or copalletized mailings when at least 51% of the total number of copies in such mailings can qualify for that designation under DMM M031.1.7.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to the *Domestic Mail Manual,* incorporated in the *Code of Federal Regulations. See* 39 CFR 111.1.

List of Subject in 39 CFR Part 111

Administrative Practice and Procedure, Postal Service.

PART 111—[AMENDED]

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

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the following sections of the *Domestic Mail Manual* (DMM) as set forth below:

M Mail Preparation and Sortation

M000 General Preparation Standards

* * * * *

M040 Pallets

* * * * *

M045 Palletized Mailings

* * * * *

[Revise heading of 8.0 to read as follows:]

8.0 COPALLETIZED FLAT-SIZE PIECES-PERIODICALS OR STANDARD MAIL

* * * * *

[Amend 8.2 by revising 8.2a, adding new 8.2b, and redesignating current 8.2b as 8.2c to read as follows:]

8.2 Periodicals

Additional standards are as follows:

a. Periodicals eligible for preferred rates (In-County, Nonprofit, Classroom, and Science-of-Agriculture) may be combined with Periodicals eligible for Outside-County rates.

b. All pallets in a copalletized mailing are identified on the content line (Line 2) of the label with only ''NEWS'' (see M031) or ''PER'' as the class designation under these conditions:

(1) If at least 51% of the total number of copies in the copalletized mailing can qualify for ''NEWS'' treatment, then all pallets in such a mailing are labeled ''NEWS.''

(2) If less than 51% of the total number of copies in a copalletized mailing can qualify for ''NEWS'' treatment, then all pallets in such a mailing are labeled ''PER.''

* * * * *

[Revise M230 by amending heading of M230; by amending 1.0; and by redesignating and amending current 2.0 as 2.2, current 3.0 as 2.1, current 4.0 as 2.4, and current 5.0 as 2.5 to read as follows:]

M230 Combining Multiple Editions or Publications

1.0 DESCRIPTION

1.1 Purpose

Periodicals publications may be prepared as a combined mailing by merging copies either during production or after finished copies are produced to achieve the finest presort level possible or to reduce the per piece charge.

1.2 Methods

Periodicals combined mailing may be prepared using either one of these following methods:

a. Individually addressed copies of different editions of a Periodicals publication (one title) or individually addressed copies of different Periodicals publications (more than one title) are merged and sorted together to obtain a finer presort level.

b. Two or more copies of different Periodicals publications (two or more titles) are placed within the same mailing wrapper and presented as one addressed piece to a single recipient to reduce the per piece charge.

2.0 BASIC STANDARDS

2.1 Eligibility and Mail Preparation

Each publication in a combined mailing must meet the basic eligibility standards in E211 and the specific standards for the rate claimed. In addition, the combined mailing must meet the eligibility and mail preparation standards for the rate claimed.

2.2 Minimum Volume

For combined mailings prepared under 1.2a, more than one Periodicals publication, or edition of a publication, may be combined to meet the required minimum volume per package, sack, or tray for the rate claimed. For combined mailings prepared under 1.2b, the minimum volume requirements in M210, M220, M810, or M820 apply, as applicable, for the rate claimed.

2.3 Labeling

All sacks or trays in a combined mailing are labeled the same, as either ''NEWS'' (see M031) or as ''PER,'' depending on which of the following conditions is met:

a. If at least 51% of the total number of copies in the combined mailing can qualify for ''NEWS'' treatment, then all sacks or trays in such a mailing are labeled ''NEWS.''

b. If less than 51% of the total number of copies in a combined mailing can qualify for ''NEWS'' treatment, then all sacks or trays in such a mailing are labeled ''PER.''

2.4 Documentation

Presort documentation required under P012 must also show the total number of addressed pieces and total number of copies for each publication, and if applicable, each edition in the combined mailing claimed at the carrier route, 5-digit, 3-digit, and basic rates. The publisher must also provide a list, by 3-digit ZIP Code prefix, of the number of addressed pieces for each publication, and if applicable, each edition claiming any destination entry and pallet discounts.

2.5 Postage Statements

Postage statements for a combined mailing must be prepared as follows:

a. For a combined mailing prepared under 1.2a, a separate postage statement that claims all applicable per piece and per pound charges must be prepared for each publication or edition. The mailer must annotate on, or attach to, each postage statement, the title and issue date of each publication or edition included in the combined mailing and indicate that the pieces were prepared as part of a combined mailing under 1.2a.

b. For mailings prepared under 1.2b, a separate postage statement claiming the applicable per pound charges must be prepared for each publication or edition in the combined mailing. The mailer must annotate on, or attach to, each postage statement, the title and

issue date of each publication or edition included in the combined mailing and indicate that the copies were prepared as part of a combined mailing under 1.2b. The per piece charges must be claimed as follows:

(1) If all copies in a combined mailing prepared under 1.2b are eligible for the Classroom or Nonprofit discount, the per piece charges must be claimed only on the postage statement for the publication that contains the highest amount of advertising.

(2) If all copies in a combined mailing prepared under 1.2b are not eligible for the Classroom or Nonprofit discount, the per piece charges must be claimed only on the postage statement for the publication that contains the highest amount of advertising.

(3) If a portion of the copies in a combined mailing prepared under 1.2b are eligible for the Classroom or Nonprofit discount and a portion are not eligible for those discounts, the per piece charges must be claimed only on the postage statement for the publication that contains the highest amount of advertising and is not eligible for the Classroom or Nonprofit discount. The Classroom or Nonprofit per piece discount must not be claimed.

* * * * *

An appropriate amendment to 39 CFR 111 to reflect the changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–27500 Filed 10–29–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC104–200239(b); FRL–7400–5]

Approval and Promulgation of Implementation Plans; North Carolina: Approval of Revisions to Inspection and Maintenance (I/M) Regulations Within the North Carolina State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the State Implementation Plan (SIP) revision submitted by the State of North Carolina for the purpose of amending regulations within 15A NCAC 2D.1000 Motor Vehicle Emissions Control Standards. North Carolina has submitted these rules for an enhanced inspection and maintenance (I/M) program which is a component of the State's Nitrogen Oxides (NO_X) Budget and Allowance Trading Program. The I/M program establishes reductions which are being utilized by the State as part of their NO_X SIP budget. Approval of these I/M rules allow North Carolina to gain credits ranging from 914 tons in 2004 to 4,385 credits in 2007. These credits are then used to determine the number of credits that will be made available for new growth in North Carolina. This submittal resolves all outstanding issues and allows for EPA's final approval of the State's NO_X Budget and Allowance Trading Program. The final approval of the North Carolina NO_X Budget and Allowance Trading Program, which was proposed for approval in 67 FR 42519 and received no adverse comments, will be processed in a later action. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before November 29, 2002.

ADDRESSES: All comments should be addressed to: Randy Terry at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Randy Terry, 404/562–9032.

North Carolina Department of Environment, Health, and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604.

FOR FURTHER INFORMATION CONTACT: Randy B. Terry at 404/562–9032.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: October 21, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–27496 Filed 10–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 165–1165; FRL–7401–5]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Kansas for the purpose of controlling volatile organic compound (VOC) emissions from area sources in Johnson and Wyandotte Counties in the Kansas City, Kansas, area. This action also proposes to provide full approval of the revised maintenance plan and rescinds the prior conditional approval of the revised maintenance plan. In the final rules section of the **Federal Register**, EPA is approving the State's SIP revision and providing full approval of the revised maintenance plan as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision/amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant 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 action. 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. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision is 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 on this proposed action must be received in writing by November 29, 2002.

ADDRESSES: Comments may be mailed to Leland Daniels, Environmental Protection Agency, Air Planning and

Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Leland Daniels at (913) 551–7651.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: October 18, 2002.

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 02–27493 Filed 10–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS–FRL–7401–9]

RIN 2060–AJ90

Control of Emissions From Spark Ignition Marine Vessels and Highway Motorcycles; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Environmental Protection Agency is extending the comment period for a proposed rule addressing new emission standards for spark-ignition marine vessels and highway motorcycles. The proposed rule was published in the **Federal Register** on August 14, 2002 (67 FR 53050). The comment period for the proposed rule is extended by 60 days and thus will end on January 7, 2003.

DATES: Comments on the proposed rule will be accepted through January 7, 2003.

ADDRESSES: *Comments:* You may send written comments in paper form or by e-mail. We must receive them by November 8, 2002. Send paper copies of written comments (in duplicate if possible) to the contact person listed below. You may also submit comments via e-mail to *MCNPRM@epa.gov.* In your correspondence, refer to Docket A–2000–02. *Docket:* Materials relevant to this rulemaking are contained in Public Docket Number A–2000–02 at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Reading Room by telephone at (202) 566–1742, and by facsimile at (202) 566–1741. The telephone number for the Air Docket is (202) 566–1742. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Margaret Borushko, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734) 214–4334; FAX: (734) 214–4816; e-mail: *borushko.margaret@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA published a notice of proposed rulemaking (NPRM) in the **Federal Register** of August 14, 2002 (67 FR 53049). That document included a deadline for written comments of November 8, 2002. Since that time, we have received requests for an extension of that deadline to allow additional time to review and comment on the proposed emission standards and related requirements. As a result of such requests, EPA is extending the comment period on the proposed rule to January 7, 2003.

The requests received by the EPA regarding an extension of the comment period have several common concerns. These common concerns involve issues such as: impact on small businesses; technical feasibility of the standards; cost of the standards; the contribution of motorcycles and boats to pollution; and impacts on performance and safety. The EPA continues to study and evaluate these issues and many others, and will consider all relevant information presented by stakeholders. The extended comment period allows stakeholders an increased opportunity to participate in the regulatory process by providing additional information, preferably with supporting data, regarding these and other issues to the EPA.

In the NPRM we requested comment on promulgating standards that would require the use of low permeability fuel tanks and fuel hoses on highway motorcycles. We did not, however, specifically propose such requirements, and although the NPRM preamble language detailed what these requirements might look like and draft regulatory language was placed in the public docket, no proposed regulatory language was included in the NPRM. However, since the NPRM was published, EPA has finalized regulations for recreational vehicles that include requirements for control of permeation emissions from fuel tanks and hoses. If we were to finalize requirements for permeation control from highway motorcycles, it is highly likely that the regulations would be modeled after those in the recently finalized recreational vehicle regulations. Interested parties wishing more detail on the type of regulatory program EPA is considering for highway motorcycle permeation control are encouraged to review the recreational vehicle requirements. The final rule for recreational vehicles is available on the EPA web site at *http://www.epa.gov/otaq/recveh.htm.* When the recreational vehicle final rule is published in the **Federal Register** we will place a copy of it in Docket A–2000–02 so that interested parties may review it during the extended comment period.

Additionally, at the public hearing on the proposed motorcycle provisions testimony was presented that encouraged EPA to ensure that the proposed emission standards be applicable to engine manufacturers as well as motorcycle manufacturers. We request additional comment on this issue. Although the current federal requirements do not specifically apply to motorcycle engines and motorcycle engine manufacturers, the California requirements with which we proposed to harmonize clearly do apply to these entities, and at least one engine manufacturer is currently certifying engines to the California and federal requirements.

The testimony from the public hearings and other materials have been placed in the docket since we published the proposal, and the hearing transcripts have been placed in the docket and on the EPA Office of Transportation and Air Quality web site. Additional information will be placed in the docket as it becomes available. We therefore encourage interested parties to stay abreast of docketed materials and to periodically check the following web pages for updates:

Highway Motorcycles

http://www.epa.gov/otaq/roadbike.htm.

Gasoline Boats and Personal Watercraft

http://www.epa.gov/otaq/marinesi.htm.

Dated: October 22, 2002.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 02–27616 Filed 10–29–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2002–11652]

RIN 2127–AI47

Federal Motor Vehicle Safety Standards; Hydraulic and Electric Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Federal motor vehicle safety standard on hydraulic and electric brake systems to extend the current minimum performance requirements and associated test procedures for parking brake systems to all vehicles with a gross vehicle weight rating (GVWR) greater than 10,000 pounds (4,536 kilograms). Currently, the only vehicles with a GVWR greater than 10,000 pounds to which the standard's parking brake requirements apply are school buses. The agency tentatively concludes that it is in the interest of safety to require all vehicles with a GVWR over 10,000 pounds to have parking brakes that meet the performance requirements currently applicable to heavy school buses. This document also proposes to change the application language of the standard and grants a petition for rulemaking requesting that the agency update a reference to an industry standard for assessing the performance of parking brakes in moving barrier collision tests so that the most recent version of the standard is referenced.

DATES: Comments must be received on or before December 30, 2002.

ADDRESSES: Comments should refer to the docket number above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System (DMS) Web site at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document.

You may call the Docket at 202–366–9324. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, Mr. Samuel Daniel, Vehicle Dynamics Division, Office of Vehicle Safety Standards (Telephone: 202–366–4921) (Fax: 202–366–4929).

For legal issues, Mr. Edward Glancy, Office of the Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820).

Both can be reached by mail at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

Federal Motor Vehicle Safety Standard No. 105, *Hydraulic and electric brake systems,* sets forth minimum performance requirements for a vehicle's service and parking brake systems. Originally, the standard applied exclusively to passenger cars with hydraulic brake systems.[1] On September 2, 1972, the agency published a final rule extending the standard to multipurpose passenger vehicles, trucks, and buses with hydraulic service brake systems (37 FR 17970). Later, however, the agency withdrew its final rule prior to its effective date because data indicated that the costs of extending the standard to such vehicles at that time outweighed the anticipated benefits (40 FR 18411, Apr. 28, 1975).

On January 16, 1976, the agency extended the standard's service and parking brake requirements to school buses with hydraulic service brake systems (41 FR 2391). Then, on October 18, 1979, the agency again published a proposal to extend the standard to multipurpose passenger vehicles, trucks, and all types of buses with hydraulic service brake systems (44 FR 60113). While the agency proposed extending the standard's service brake requirements to all multipurpose passenger vehicles, trucks, and buses, regardless of the vehicle's GVWR, the agency proposed a more limited extension of the standard's parking brake requirements. The agency's proposal excluded all vehicles with a GVWR greater than 10,000 pounds (4,536 kilograms), other than school buses, from the application of Standard No. 105's parking brake requirements.

Although NHTSA did not propose extending the standard's parking brake requirements to multipurpose passenger vehicles, trucks, and buses (other than school buses) with a GVWR greater than 10,000 pounds at that time, the agency did indicate, in the notice of proposed rulemaking, that it intended to establish additional performance requirements for such vehicles in future rulemaking. The final rule extending Standard No. 105's parking brake requirements to multipurpose passenger vehicles, trucks, and buses with a GVWR of 10,000 pounds or less was published on January 2, 1981 (46 FR 55). Among other things, it required parking brakes on multipurpose passenger vehicles, trucks, and buses with a GVWR of 10,000 pounds or less to hold the vehicle stationary, in both forward and reverse directions, for five minutes on a 30 percent grade. In response to three petitions for reconsideration, the agency decided to change the gradient requirement for parking brakes on these vehicles from 30 percent to 20 percent (46 FR 61887, Dec. 21, 1981).

The Safety Need

The agency believes that parking brakes are an important operational safety feature and tentatively concludes that it is in the interest of safety to require that all vehicles be equipped with parking brakes that comply with Federal requirements. When properly engaged, parking brakes can prevent driverless roll-away events, which can result in collisions, injuries, and fatalities. A review of the agency's Fatality Analysis Reporting System (FARS) database indicates that a total of three to five fatal vehicle roll-away events involving large, hydraulically-braked, non-school bus vehicles occurred between 1991 and 1999. Additionally, during that same period, there were annually about 574 crashes with 82 injured people resulting from roll-away, heavy duty trucks, according to data from the General Estimates System (GES). The GES data are not sufficiently detailed to determine which of the vehicles were hydraulically-braked and which were air-braked, nor can the data be used to determine if the vehicles were parked prior to the roll-away incident. Therefore, these figures likely represent the upper bound of the number of crashes and injuries caused by the rolling away, due to parking brake problems, of parked, heavy duty, heavy trucks and buses equipped with hydraulic brakes.

Many of the driverless roll-away events may be caused by misapplication or non-use of the parking brake. Requiring all heavy vehicles to meet the same parking brake performance requirements would not affect the non-use problem; however, it might increase the likelihood that operators of these vehicles (particularly fleet drivers who must operate a large number of different heavy vehicles) would be better able to

[1] The agency extended Standard No. 105 to vehicles with electric braking systems on September 5, 1997 (62 FR 46907).

engage their vehicle's parking brake fully because the force required to apply the parking brake would be standardized. This might reduce the incidence of parking brake misapplication. In addition, requiring that all heavy vehicles remain stationary with the parking brake fully engaged, in both forward and reverse directions, when parked on a 20 percent grade, should prevent the occurrence of driverless roll-away events due to parking brake failure on most roads in the United States because most U.S. roads have less than a 20 percent grade. Accordingly, requiring all vehicles to which Standard No. 105 applies to have parking brakes meeting the standard's effort limit and gradient requirements should decrease the likelihood of driverless roll-away events and, therefore, lead to modest collision, injury, and fatality reduction benefits.

As explained more fully below, it is likely that most, if not all, heavy vehicles are already manufactured with parking brakes designed to meet Standard No. 105's requirements. Even if this is true, however, we do not know whether those parking brakes would actually perform successfully when tested under the conditions and according to the test procedures outlined in paragraphs S6 and S7 of the standard because manufacturers are currently not required to certify compliance. Requiring manufacturers to certify the performance of the parking brakes on these heavy vehicles would provide added assurance that they actually meet the standard's requirements. It would also guard against the possibility of a decrease in performance of these parking brakes due to future truck chassis design changes.

Paragraph S5.2 of the standard currently requires that all heavy school buses be manufactured with a parking brake of a friction type with a solely mechanical means to retain engagement. Such parking brakes are required to meet the standard's effort limit and gradient requirements, found in paragraphs S5.2(b) and S5.2.3, respectively. Paragraph S5.2(b) requires that the parking brake be capable of being engaged fully with a force applied to the control of not more than 150 pounds for a foot-operated system and not more than 125 pounds for a hand-operated system. Paragraph S5.2.3 requires that the parking brake system be capable of holding the vehicle stationary for five minutes, in both forward and reverse directions, on a 20 percent grade.

NHTSA believes that it is reasonable to assume that operators of heavy school buses and other heavy vehicles are of similar size and strength. In addition, the agency believes heavy school buses and other heavy vehicles are parked in similar environments. Therefore, the agency tentatively concludes that it is appropriate to apply the same effort limit and gradient requirements (and associated test procedures) to these vehicles as are currently applied to heavy school buses. Nevertheless, the agency requests comments on the appropriateness of applying the heavy school bus effort limit and gradient requirements to other heavy vehicles.

Costs and Benefits

During October and November of 2000, several heavy vehicle manufacturers, including General Motors, Ford Motor Company, and International Truck and Bus Corporation, indicated that they are not aware of any vehicles for sale in the United States that are not equipped with a parking brake system. These manufacturers also expressed the belief that parking brake systems for trucks and buses with a GVWR greater than 10,000 pounds are already designed to meet the requirements specified in Standard No. 105 for heavy school buses. With respect to those trucks and buses with a GVWR greater than 10,000 pounds that are built on the same chassis used to build heavy school buses, it is likely that they are equipped with the same parking brake systems found in heavy school buses.

If this is true, then the agency estimates that the cost of requiring all manufacturers of non-school bus vehicles with a GVWR greater than 10,000 pounds to meet the standard's parking brake requirements would be minimal (less than $10 per vehicle) because few, if any, modifications to the already existing parking brakes would be necessary to bring those brakes into compliance with the standard. The cost of conducting the parking brake compliance test should not be significant when compared to the total cost of FMVSS No. 105 compliance testing. The agency believes that most test facilities already have the 20 percent grade slope we are proposing. The proposed test procedure is straightforward and not time consuming. Accordingly, the agency does not anticipate that the cost of certifying compliance to the proposed requirements would be significant. Nevertheless, the agency is interested in receiving estimates from heavy vehicle manufacturers regarding the anticipated costs of conducting the parking brake certification tests as well as the costs of meeting the proposed requirements. Any cost estimates submitted should include a detailed description of the modifications the commenter considers necessary to bring these vehicles' parking brakes into compliance with the standard and/or a detailed estimate of certification test costs.

Given the likelihood that most vehicles with a GVWR over 10,000 pounds are already equipped with a parking brake system that meets the performance requirements of S5.2 and S5.2.3, NHTSA anticipates only marginal safety benefits from formally extending these requirements. Nevertheless, to the extent that any vehicles with a GVWR over 10,000 pounds do not already comply with these requirements, the agency does expect that the extension of the parking brake effort limit and gradient requirements to such vehicles would reduce the number of collisions, injuries, and fatalities due to driverless roll-away events.

As stated above, NHTSA believes that many roll-away events occur when the parking brake is either not used or misapplied. It is also possible that some roll-away events are caused by parking brake failure, which occurs when the parking brake is properly applied but fails to hold the vehicle stationary, due to catastrophic failure, wear-and-tear, or other factors. While the proposed changes are not likely to have any effect on the non-use problem, the standardization of parking brake effort limit requirements for all heavy vehicles may reduce the incidence of misapplication by making it easier for operators of these vehicles to fully engage the parking brake. In addition, requiring all hydraulically-braked heavy vehicles to have parking brakes that meet the gradient requirement should decrease the likelihood of parking brake failure on most U.S. roads. For these reasons, the agency anticipates modest collision, injury, and fatality reduction benefits from extending Standard No. 105's parking brake requirements to all hydraulically-braked vehicles with a GVWR greater than 10,000 pounds.

Additional Rulemaking

The agency is using this rulemaking proposal to address several other Standard No. 105 issues that have been recently brought to our attention. In addition to the substantive changes outlined above, the agency also proposes to change the language in the application paragraph of the standard (S3. *Application*) to reflect the inapplicability of the standard's requirements to hydraulically-braked vehicles with a GVWR of 3,500 kilograms (7,716 pounds) or less. Standard No. 105 used to apply to these

vehicles. However, Standard No. 135 now applies instead.

In addition, on June 10, 2002, the agency received a petition for rulemaking from Mr. James E. Stocke of Ann Arbor, Michigan, requesting that NHTSA update a reference to the Society of Automotive Engineers' (SAE) Recommended Practice for Moving Barrier Collision Tests, J972 (SAE J972). A portion of an older (November 1966) version of SAE J972 is referenced in Standard No. 105, paragraph S7.19, as part of the parking brake test procedures for passenger cars and school buses with a GVWR of 10,000 pounds or less. Although there are no changes to the description of the rigid moving barrier in the more recent (May 2000) version of the document, the ''Barrier'' paragraph has been re-designated as paragraph 4.3 instead of paragraph 3.3, its designation in the November 1966 version of the document.

The agency does not necessarily update references to SAE or other industry standards every time those standards are amended, especially when the standard referenced by the agency is properly identified (and therefore easy to locate) through publication dates or other appropriate information, such as title. However, in this case, Standard No. 105 references a version of the SAE document that is more than 35 years old and may be difficult to locate. Furthermore, the information in the updated reference is substantively identical to the information in the original reference. Accordingly, NHTSA has decided to grant Mr. Stocke's petition and proposes to amend paragraph S7.19 to update the reference to the May 2000 version of SAE J972.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the 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 the Executive Order.

This notice was not reviewed under Executive Order 12866. Further, this notice was determined not to be significant within the meaning of the DOT Regulatory Policies and Procedures.

In this document, NHTSA is proposing to extend the applicability of already existing parking brake requirements to cover vehicles previously excluded. As explained above, anecdotal evidence from heavy vehicle manufacturers suggests that most, if not all, of these vehicles are already manufactured with parking brakes designed to meet the minimum performance requirements that the agency is proposing to apply. For the remaining vehicles, the agency estimates the cost of complying with these requirements to be less than $10 per vehicle. Considering that the total number of such vehicles that would be subject to the proposed requirements is estimated to be about 212,000 annually, the agency estimates that the total annual effect of this proposed rule would be less than $2,120,000. Accordingly, the agency does not believe that this proposal would have any significant economic effects.

The DOT's regulatory policies and procedures require the preparation of a full regulatory evaluation, unless the agency finds that the impacts of a rulemaking are so minimal as not to warrant the preparation of a full regulatory evaluation. Since anecdotal evidence suggests that most, if not all, of these vehicles are already manufactured with parking brakes designed to meet the minimum performance requirements that the agency is proposing to apply, the agency believes that the impacts of this rulemaking would be minimal. Thus, it has not prepared a full regulatory evaluation.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR § 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The 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.

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. As explained above, anecdotal evidence from heavy vehicle manufacturers suggests that most, if not all, of these vehicles are already manufactured with parking brakes designed to meet the minimum performance requirements that the agency is proposing to apply. For the remaining vehicles, the agency estimates the cost of complying with these requirements to be less than $10 per vehicle. Considering that the total number of such vehicles that would be subject to the proposed requirements is estimated to be about 212,000 vehicles annually, the agency estimates that the total annual effect of this proposed rule would be less than $2,120,000. Accordingly, I hereby certify that it would not have a significant economic impact on a substantial number of small entities.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA 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.'' The Executive Order defines ''policies that have federalism implications'' to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States,

or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, NHTSA may not issue a regulation with 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, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA also may not issue a regulation with 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.

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132. The agency has determined that this proposed rule would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposal would not have any substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

Civil Justice Reform

This proposed amendment would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. This proposed rule would not require any collections of information as defined by the OMB in 5 CFR Part 1320.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs the agency to provide Congress, through the OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

There are no voluntary consensus standards available at this time. However, NHTSA will consider any such standards if they become available.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA 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 NHTSA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This proposed rule would not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of more than $100 million annually. The estimated cost of complying with the proposed requirements is less than $10 per vehicle. Considering that the total number of vehicles to which these requirements would apply is estimated to be about 212,000 vehicles annually, the estimated aggregate cost of this proposed rule would be less than $2,120,000. Accordingly, the agency has not prepared an Unfunded Mandates assessment.

Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make this rulemaking easier to understand?

If you have any responses to these questions, please include them in your comments on this NPRM.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

You may also submit your comments to the docket electronically by logging onto the Dockets Management System website at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).
2. On that page, click on ''search.''
3. On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1998–1234'', you would type ''1234''. After typing the docket number, click on ''search''.
4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the ''pdf'' versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, and Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30166, and 30177; delegation of authority at 49 CFR 1.50.

2. Section 571.105 is amended by revising S3, S5.2, S5.2.3, S7.7.1, paragraph (b) of S7.7.1.3, and S7.19 as follows:

§ 571.105 Standard No. 105; Hydraulic and electric brake systems.

* * * * *

S3. *Application.* This standard applies to vehicles with a GVWR greater than 3,500 kilograms (7,716 pounds) that are equipped with hydraulic or electric brake systems.

* * * * *

S5.2 *Parking brake system.* Each vehicle shall be manufactured with a parking brake system of a friction type with a solely mechanical means to retain engagement, which shall under the conditions of S6, when tested according to the procedures specified in S7, meet the requirements specified in S5.2.1, S5.2.2, or S5.2.3 as appropriate, with the system engaged—

(a) In the case of a vehicle with a GVWR of 10,000 pounds or less, with a force applied to the control not to exceed 125 pounds for a foot-operated system and 90 pounds for a hand-operated system; and

(b) In the case of a vehicle with a GVWR greater than 10,000 pounds, with a force applied to the control not to exceed 150 pounds for a foot-operated system and 125 pounds for a hand-operated system.

* * * * *

S5.2.3 (a) The parking brake system on a multipurpose passenger vehicle, truck and bus (other than a school bus) with a GVWR of 10,000 pounds or less shall be capable of holding the vehicle stationary for 5 minutes, in both forward and reverse directions, on a 20 percent grade.

(b) The parking brake system on a vehicle with a GVWR greater than 10,000 pounds shall be capable of holding the vehicle stationary for 5 minutes, in both forward and reverse directions, on a 20 percent grade.

* * * * *

S7.7.1 *Test procedure for requirements of S5.2.1 and S5.2.3.*

* * * * *

S7.7.1.3

* * * * *

(b) In the case of a vehicle with a GVWR greater than 10,000 pounds not more than 150 pounds for a foot-operated system, and not more than 125 pounds for a hand-operated system.

* * * * *

S7.19 *Moving barrier test.* (Only for vehicles that have been tested according to S7.7.2.) Load the vehicle to GVWR, release parking brake, and place the transmission selector control to engage the parking mechanism. With a moving barrier as described in paragraph 4.3 of SAE recommended practice J972 ''Moving Barrier Collision Tests,'' May 2000, impact the vehicle from the front at 2½ mph. Keep the longitudinal axis of the barrier parallel with the longitudinal axis of the vehicle. Repeat the test, impacting the vehicle from the rear.

Note: The vehicle used for this test need not be the same vehicle that has been used for the braking tests.

* * * * *

Issued: October 23, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–27526 Filed 10–29–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 102302B]

RIN 0648–AN12

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan

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

ACTION: Notice of availability of a fishery managementplan amendment; request for comments.

SUMMARY: NMFS announces that the Mid-Atlantic Fishery Management Council (Council) has submitted Amendment 13 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) for Secretarial review and is requesting comments from the public. Amendment 13 is intended to revise the quota management program for the black sea bass commercial fishery in order to manage the fishery more effectively and to consider management measures to minimize the effects of fishing on essential fish habitat (EFH).

DATES: Comments must be received on or before December 30, 2002.

ADDRESSES: Comments on the FMP should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Amendment 13 to the Summer Flounder, Scup, and Black Sea Bass FMP.''

Copies of the FMP, Amendment 13, the Final Environmental Impact Statement (FEIS), Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 200 S. New Street, Dover, DE 19904–6790.

FOR FURTHER INFORMATION CONTACT: Peter Christopher, Fishery Policy Analyst, 978–281–9288, fax 978–281–9135.

SUPPLEMENTARY INFORMATION: The purpose of Amendment 13 is to rectify problems associated with the black sea bass commercial fishery and to consider management measures to minimize the adverse effects of fishing on EFH. Amendment 13 to the FMP proposes to implement a coastwide annual quota program for the black sea bass commercial fishery to replace the current quarterly quota program. The coastwide annual quota program is proposed because it would best complement state-by-state quota allocations adopted by the Atlantic States Marine Fisheries Commission for black sea bass. Amendment 13 proposes to eliminate the requirement that vessels with both a Northeast Region Black Sea Bass permit and a Southeast Region Snapper/Grouper permit must relinquish their Northeast Region Black Sea Bass permit for 6 months after a fishery closure if they want to continue to fish for black sea bass south of Cape Hatteras under their Southeast Region Snapper/Grouper permit. The Council considered alternatives for minimizing adverse impacts of fishing on EFH, and has determined that current measures are adequate.

A proposed rule that would implement the FMP may be published in the **Federal Register** for public comment, following NMFS' evaluation of the proposed rule under the procedures of the Magnuson-Stevens Fishery Conservation and Management Act. Public comments on the proposed rule must be received by the end of the comment period on the FMP to be considered in the approval/disapproval decision on the FMP. All comments received by December 30, 2002, whether specifically directed to the FMP or the proposed rule, will be considered in the approval/disapproval decision on the FMP. Comments received after that date will not be considered in the decision to approve or disapprove the FMP.

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

Dated: October 24, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–27566 Filed 10–29–02;8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 021016235–2235–01; I.D. 092402E]

RIN 0648–AP87

Fisheries Off West Coast States and in the Western Pacific; Coastal Pelagic Species Fishery; Amendment 10

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes a regulation to implement Amendment 10 to the Coastal Pelagic Species Fishery Management Plan (FMP), which was submitted by the Pacific Fishery Management Council (Council) for review and approval by the Secretary of Commerce. Amendment 10 addresses the two unrelated subjects of the transferability of limited entry permits and maximum sustainable yield (MSY) for market squid. Only the provisions regarding limited entry permits require regulatory action. The purpose of this proposed rule is to establish the procedures by which limited entry permits can be transferred to other vessels and/or individuals so that the holders of the permits have maximum flexibility in their fishing operations while the goals of the FMP are achieved.

DATES: Comments must be received by December 16, 2002.

ADDRESSES: Send comments on the proposed rule to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

Copies of Amendment 10, which includes an environmental assessment/regulatory impact review, and determination of the impact on small businesses may be obtained from Donald O. McIssac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, Oregon, 97220. Comments regarding the collection-of-information requirements contained in this rule should be sent to Rodney R. McInnis, Acting Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, and to the Office of Information and Regulatory Affairs, Office of Management and Budget

(OMB), Washington, DC 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: James Morgan, Sustainable Fisheries Division, NMFS, at 562–980–4036.

SUPPLEMENTARY INFORMATION: The Council distributed Amendment 10 for public review on April 22, 2002. At its June 2002 meeting, the Council reviewed written comments, received comments from its advisory bodies, and heard public comments. The Council submitted Amendment 10 for Secretarial review by a letter dated August 19, 2002. On October, 3, 2002, a notice of availability of Amendment 10 and the associated documents was published in the **Federal Register** (67 FR 62001).

Background

On June 10, 1999, Amendment 8 to the Northern Anchovy Fishery Management Plan was partially approved by the Secretary of Commerce. Two of the provisions of Amendment 8 were disapproved. However, these two provisions addressed matters required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to be included in all fishery management plans. As such, the Council was required to revisit these issues in subsequent actions. First, bycatch provisions of Amendment 8 were disapproved because they did not contain a standardized reporting methodology to assess the amount and type of bycatch in the fishery. Bycatch requirements of the Magnuson-Stevens Act were eventually addressed in Amendment 9, which was approved on March 22, 2001. Second, optimum yield for market squid (*Loligo opalescens*) was disapproved because Amendment 8 did not provide an estimate of MSY. The Council is addressing MSY through submission of Amendment 10.

Market Squid

Various approaches to determine an MSY proxy for market squid have been attempted. With little knowledge of the biology of squid and inadequate data available, other than landings, results from all methods used were determined to contain too much uncertainty for management, especially considering the large harvests in the 1990s resulting from new market demand. Amendment 10, which contains a description of these methods, examines such things as historical landings, the range of the species, and the manner in which the fishery is conducted.

Additional data on squid became available from research conducted by the California Department of Fish and Game (CDFG) through a program implemented by State legislation establishing permit fees to fund squid research. With new information on growth, maturity, and fecundity, the Council's Scientific and Statistical Committee (SSC) recommended, and the Council concurred, that the SSC work with NMFS and the CDFG to organize a stock assessment review panel (STAR). The STAR panel met on May 14–17, 2001, at the Southwest Fisheries Science Center in La Jolla, California, and developed what became known as the egg escapement (EE) method. A report was prepared and presented to the Council's Coastal Pelagic Species Management Team (Management Team) in August 2001.

At a public meeting on August 14–15, 2001, the Management Team discussed the STAR panel report and decided on the values to be used in the EE method, making its recommendations to the Council at the Council's November 21, 2001, meeting.

The EE method is based on a modeling approach that addresses the life history of the species, with a focus on the mortality and spawning rates of sexually mature females. Per-recruit analysis theory was used to generate stock parameter estimates, such as mean standing stock of eggs per harvested female, eggs per recruit, and egg escapement. All of the estimates were evaluated across a range of fishing mortality. To gauge the fishery's impact on the squid population, the estimated reproductive output of the harvested population was compared with the population's output in the absence of fishing.

The EE method allows for ''real-time'' management of the fishery, without an unnecessarily large investment in personnel or regulations. The method would be used as a management tool to assess whether the fleet is fishing above or below a sustainable level of exploitation. A sustainable level of egg escapement can be practically interpreted as a level of reproductive (egg) escapement that is believed to be at or near a minimum level necessary to allow the population to maintain its level of abundance into the future, that is, to allow for sustainable reproduction year after year.

A critical underpinning of the EE approach is that the fishery continues to concentrate strictly on squid spawning grounds. This fishery has the following characteristics: (1) historically, harvests have consisted almost entirely of mature animals that have laid some or all of their eggs before capture; (2) recruitment and future catches in each fishing season largely depend on successful and adequate spawning in the preceding season; (3) the squid are determinate spawners, with potential lifetime fecundity fixed at maturity; (4) the squid die soon after laying their full complement of eggs; and (5) interpretable, anatomical evidence of spawning must be able to be estimated from commercial harvest data, which can be routinely collected through an ongoing port sampling program. The fact that evidence of spawning can be derived from commercially landed specimens offers a unique opportunity to implement an EE method for fisheries management.

The proposed alternative in Amendment 10 is to adopt the EE method to monitor the market squid fishery in compliance with the Magnuson-Stevens Act. This action will require amending the FMP, but will not require implementing rules.

Capacity Goal

Regulations at 50 CFR 660.514 prohibit the transfer of a limited entry permit to a different vessel or a different owner after December 31, 2000. This provision was imposed to allow for attrition in the fleet following an initial period of transfers. Since then, the Council's Management Team has been working on issues related to the harvesting capacity of the fleet by examining the fleet's dependency on a variety of species that exhibit wide variability and by determining the actual physical capacity of the fleet. Amendment 10 would establish a capacity goal for the fleet and set conditions for the transfer of permits to maintain the capacity goal.

The purpose of the capacity goal is to ensure that fishing capacity in the CPS limited entry fishery is in balance with resource availability. The preferred alternative in Amendment 10 is to establish a capacity goal for the limited entry fleet by using a proxy of 5,650.9 mt of the aggregate gross tonnage (GT) of the fleet. Measuring the actual harvesting capacity of a vessel and monitoring each vessel's capacity can be complicated because the amount of fish a vessel can carry depends on many factors; therefore, Amendment 10 proposes to use GT as a proxy for capacity. The aggregate gross tonnage level of 5,650.9 mt would result in a larger, diverse CPS finfish fleet, which also relies on other fishing opportunities such as fishing for squid and tuna. The current fleet of 65 vessels, which totals 5,650.9 mt GT, satisfies this goal. Estimated normal harvesting capacity for the current fleet, which was determined by reviewing historical average and maximum landings per trip,

ranged from 60,000 mt to 111,000 mt per year. The physical harvesting capacity of the current fleet ranged from 361,000 to 539,000 mt per year. Physical capacity is a technological or engineering measure of the maximum potential output per unit of time.

Permit Transfers

Under the proposed alternative in Amendment 10, as long as aggregate fleet gross tonnage is not above 5,933.5 mt (fleet gt plus 5 percent) limited entry permits could be transferred with the following restrictions: (1) full transferability of permits only to vessels of comparable capacity (vessel GT +.10 (GT) or less), and (2) permits could be combined up to a greater level of capacity in cases where the vessel to which the permits would be transferred to is of greater harvesting capacity than the vessel from which the permit originated.

Each limited entry permit would have an endorsement based on the currently permitted vessel's calculated GT as defined by the formula in 46 CFR 69.209 for ship-shaped hulls. This formula is used by the U.S. Coast Guard (GT=0.67 (length x breadth x depth)/100).

The original permits and their respective endorsements would remain in effect for the lifetime of each permit, regardless of the GT of a vessel to which it was transferred. In cases where a permit was transferred to a vessel with a smaller GT, the original GT endorsement would remain, and excess GT could not be split out from the original permit configuration and sold. In cases where two or more permits were transferred to a larger vessel, the larger vessel would hold the original permits and could fish for CPS finfish as long as the aggregate GT endorsements, including the 10 percent allowance, as defined by the formula for comparable capacity (vessel GT + .10 (GT) or less) added up to the new vessel's calculated GT. In the event that a vessel with multiple permits leaves the CPS limited entry program, the permits could be sold together or separately, but the original permit endorsement could not be altered.

To ensure manageability of the permit program and stability of the fleet, only one transfer per permit would be allowed during each calendar year. Permits could be used only on the vessel to which they were registered. Catch history would be tied to the vessel and not to the permits.

Maintaining the Capacity Goal

When the upper threshold of aggregate fleet capacity plus 5 percent (5,933.5 mt) is reached, fleet capacity would be restored to the capacity goal (5,650.9 mt) by restricting conditions for permit transfer. When the threshold of 5,933.5 mt is reached or exceeded, permits could only be transferred to vessels with equal or smaller GT, and the 10–percent vessel allowance would be removed. Restoring the 10 percent-allowance could be considered once total aggregate fleet capacity reached the 5,650.9 mt target.

Procedures for Issuing New Limited Entry Permits

Based on positive changes in CPS finfish resources or market conditions, and, if the Council determines, and recommends to NMFS, that new limited entry permits should be issued, the qualifying criteria originally established in the FMP would be used for issuance of these new permits. This would entail continuing down the list of vessels having landings during the 1993–97 window period in order of decreasing window period landings from the original qualifying level of 100 mt. If no vessel meets the qualifying criteria of 100 mt, then the permit would be issued to the vessel with total landings nearest 100 mt during the qualifying period. New permits could be issued on either a temporary or permanent basis, depending on the circumstances surrounding the need for additional fleet capacity.

Classification

At this time, NMFS has not determined that Amendment 10, which this rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable law. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

There are some fish processors operating in the west coast CPS finfish fishery that would not be considered small businesses, but the vast majority of CPS finfish fishery participants are considered small businesses under the SBA standards. The small entities that could be affected by the proposed regulatory actions would consist exclusively of fish-harvesting businesses, i.e. fishing vessels. All vessels fishing for CPS are considered small business.

The proposed rule would establish a capacity goal for the CPS fleet, maintain the existing fleet of 65 vessels with limited entry permits, allow transfer of permits to new vessels and/or individuals under conditions controlling the size of the vessels, and issue new permits if justified by resource and economic conditions. Establishing a capacity goal sets a limit on the capital that can be invested to harvest a limited resource. Restraining the growth of the capacity of the existing fleet would maintain the capacity goal while allowing fishing vessels to take full advantage of all fishing opportunities, which is important to the economics of CPS vessels because of the wide fluctuations in abundance that occur with many of the individual species. Allowing the transfer of permits gives the holders of limited entry permits flexibility in the management of their individual business operations while maintaining the capacity goal and allows non participants in the fishery to enter the fishery. The payment to the seller for a permit would presumably at least reflect the worth of that permit remaining with the transferring vessel. Issuing new permits would only occur when economic conditions were favorable for adding additional vessels. The procedures for qualifying new vessels would therefore not have an impact on the existing fleet, but the alternatives for issuing new permits could have disproportionate effects on vessels vying for entry. Effects of the regulatory actions under consideration are expected to be neutral, although positive results will likely accrue in the long term by making permits transferable. This will provide some protection to the investments of individual fishermen and reduce the possibility of a declining fleet.

As a result, an Initial Regulatory Flexibility Analysis wasnot prepared.

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act and which has been approved by OMB under control number 0648–0204. Public reporting burden for an application for transfer of a limited entry permit is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (See **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subject in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: October 24, 2002.

Rebecca Lent,

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

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.502, definitions for ''comparable capacity'', and ''gross tonnage'' are added, in alphabetical order, to read as follows:

§ 660.502 Definitions.

* * * * *

Comparable capacity means gross tonnage plus 10 percent of the vessel's calculated gross tonnage.

* * * * *

Gross tonnage (GT) means gross tonnage as determined by the formula in 46 CFR 69.209(a) for a vessel not designed for sailing (.67 x length x breadth x depth/100). A vessel's length, breadth, and depth are those specified on the vessel's certificate of documentation issued by the U.S. Coast Guard or State.

* * * * *

3. In § 660.512, a new paragraph (h) is added to read as follows:

§ 660.512 Limited entry fishery.

* * * * *

(h) *Issuance of new permits.* (1) When the aggregate gross tonnage of all vessels participating in the limited entry fishery declines below 5,650.9 metric tons (mt), the Council will review the status of the fishery, taking into consideration:

(i) The changes in gross tonnage that have and are likely to occur in the transfer of limited entry permits;

(ii) The actual harvesting capacity as experienced in the current fishery in comparison to the capacity goal;

(iii) Comments of the CPSMT;

(iv) Any other relevant factors related to maintaining the capacity goal.

(2) Following its review, the Council will recommend to NMFS whether additional permit(s) should be issued and if the new permit(s) should be temporary or permanent. The issuance of new permit(s) shall be based on the following:

(i) The qualifying criteria in paragraph (b) of this section, but vessels that were issued a permit before December 31, 2000, are not eligible.

(ii) If no vessel meets the qualifying criteria in paragraph (b), then the permit(s) will be issued to the vessel(s) with total landings nearest 100 mt during the qualifying period of paragraph (b).

(iii) No vessel will be issued a permit under this paragraph (h) that is currently registered for use with a permit.

(3) The Regional Administrator will review the Council's recommendation and determine whether issuing additional permit(s) is consistent with the FMP and with paragraph (h)(2) of this section. If issuing additional permit(s) is appropriate, the Regional Administrator will:

(i) Issue the appropriate number of permits consistent with the Council's recommendation; and

(ii) Publish a document in the **Federal Register** notifying the public that a new permit has been issued, the conditions attached to the permits, and the reasons for the action.

4. Section 660.514 is revised to read as follows:

§ 660.514 Transferability.

(a) *General.* (1) The SFD will process applications for transferring limited entry permits to a different owner and/or to a different vessel according to this section.

(2) After the effective date of the final rule, the SFD will issue a limited entry permit to the owner of each vessel permitted to participate in the limited entry fishery for CPS. This permit will replace the existing permit and will include the gross tonnage of the vessel, which will constitute an endorsement for that vessel for the purpose of regulating the transfer of limited entry permits.

(b) *Criteria.* (1) When the aggregate gross tonnage of all vessels participating the limited entry fishery is at or below 5,650.9 mt, a permit may be transferred to a different owner or to a different vessel in the following circumstances only:

(i) A permit may be transferred to a vessel without a permit if the vessel without a permit has a comparable capacity to the capacity on the permit or is less than comparable capacity on the permit.

(ii) When a permit is transferred to a vessel without a permit that has less gross tonnage than that of the permitted vessel, the excess gross tonnage may not be separated from the permit and applied to a second vessel.

(iii) A permit may be transferred to a vessel without a permit that is of greater than comparable capacity only if two or more permits are transferred to the vessel without a permit to equal the gross tonnage of the vessel. The number of permits required will be determined by adding together the comparable capacity of all permits being transferred. Any gross tonnage in excess of that needed for a vessel remains with the permit.

(2) When a vessel with multiple permits leaves the fishery, the permits may be sold separately and applied to other vessels according to the criteria in this section.

(c) *Stipulations.* (1) The gross tonnage endorsement of a permit is integral to the permit for the duration of the permit, regardless of the gross tonnage of any vessel to which the permit is transferred.

(2) Permits may be used only on the vessel for which they are registered by the SFD. All permits that authorize a vessel to operate in the limited entry fishery must be on board the vessel during any fishing trip on which CPS is harvested or is on board.

(3) A permit may be transferred only once during a calendar year.

(d) *Vessel alterations.* (1) A permitted vessel's length, breadth, or depth may be altered to increase the gross tonnage of the vessel only if the aggregate gross tonnage of all vessels participating the limited entry fishery equals to, or is below 5,650.9 mt, and only under the following conditions:

(i) The gross tonnage of the altered vessel, calculated according to the formula in 46 CFR 69.209(a), does not exceed 110 percent of the vessel's original gross tonnage endorsement, and

(ii) A new certificate of documentation is obtained from the U.S. Coast Guard or State. Modifications exceeding 110 percent of the vessel's gross tonnage endorsement will require registration of the vessel under an additional permit or permits or under a permit with a sufficient gross tonnage endorsement.

(2) A copy of the certificate of documentation indicating changes in length, depth, or breadth must be provided to the SFD.

(3) The revised gross tonnage will not be valid as an endorsement until a revised permit is issued by the SFD.

(e) *Applications.* (1) All requests for the transfer of a limited entry permit will be made to the SFD in writing and shall contain the following information:

(i) Name, address, and phone number of the owner of the permitted vessel.

(ii) Name of the permitted vessel and documentation number of the vessel.

(iii) Name, address, and phone number of the owner of the vessel to which the permit is to be transferred.

(iv) Name and documentation number of the vessel to which the permit is to be transferred.

(v) Signature(s) of the owner(s) of the vessels participating in the transfer.

(vi) Any other information that the SFD may request.

(2) No permit transfer is effective until the transfer has been authorized by the SFD.

(f) *Capacity reduction.* (1) When the aggregate gross tonnage of the limited entry fleet reaches 5,933.5 mt, a permit may be transferred to a vessel without a permit only if the vessel without a permit is of the same or less gross tonnage.

(2) When the aggregate gross tonnage of the limited entry fleet reaches 5,933.5 mt, alterations in the length, depth, or breadth of a permitted vessel may not result in an increase in the gross tonnage of the vessel.

[FR Doc. 02–27613 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 67, No. 210

Wednesday, October 30, 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

Natural Resources Conservation Service

Notice of Availability of a Finding of No Significant Impact (FONSI)

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of availability of a Finding of No Significant Impact for a project on the Williamson River Delta for review and comment.

SUMMARY: The NRCS has issued a Finding of No Significant Impact (FONSI) for a stream restoration project on the Williamson River Delta. A copy of the FONSI and the final Supplemental Environmental Assessment (SEA) is available for public review at the following locations:

- NRCS Office, 2316 South 6th Street, Suite C, Klamath Falls, OR 97601
- Klamath County Commissioners, 305 Main St, 2nd Floor, Klamath Falls, OR 97601
- Klamath Tribes Natural Resources Department, 501 Chiloquin Blvd., Chiloquin, OR 97624
- Additional copies may be obtained by contacting Shelley Tucker, NRCS, 541–883–6932—extension 113.

DATES: Comments will be received for a 30-day period commencing with this date of publication.

ADDRESSES: Address all requests and comments to Kevin Conroy, Basin Team Leader, Natural Resources Conservation Service (NRCS), 2316 South 6th Street, Suite C, Klamath Falls, OR 97601, 541–882–9044 (FAX).

FOR FURTHER INFORMATION CONTACT: Kevin Conroy, 541–883–6924.

Dated: October 15, 2002.

Bob Graham,

State Conservationist, Portland, OR.

[FR Doc. 02–27594 Filed 10–29–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Sicily Island Watershed, Catahoula Parish, LA

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of intent to deauthorize Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83–566, and Natural Resources Conservation Service Guidelines (7 CFR 622), the Natural Resources Conservation Service gives notice of the intent to deauthorize Federal funding for the Sicily Island Watershed, Catahoula Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana, 71302, telephone: 318–473–7751.

SUPPLEMENTARY INFORMATION: A determination has been made by Donald W. Gohmert that the proposed works of improvement for the Sicily Island Watershed will not be installed. The sponsoring local organization(s) have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Donald W. Gohmert, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register**.

Donald W. Gohmert,

State Conservationist.

[FR Doc. 02–27593 Filed 10–29–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

[I.D. 102402D]

Submission for OMB Review; Comment Request

The Department of Commerce 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: National Oceanic and Atmospheric Administration (NOAA).

Title: Economic Data Collection for the Trap Fishery in the U.S. Caribbean.

Form Number(s): None.

OMB Approval Number: None.

Type of Request Regular submission.

Burden Hours: 150.

Number of Respondents: 100.

Average Hours Per Response: 1.5.

Needs and Uses: Several studies have shown that the haphazard placement of traps damages hard corals and gorgonians. In addition, to physically damaging hard corals and gorgonians traps target various over-exploited reef fish species, which further threaten the health and stability of coral reef habitats. To protect coral reef habitats and ensure the sustainable use of reef fish resources, the Caribbean Fishery Management Council (CFMC) is considering limiting the total number of traps in the fishery. The goal of the proposed survey is to gather socioeconomic information on the Caribbean (Puerto Rico, St. Thomas, St. John, and St. Croix) trap fishery to support the management and conservation efforts of the CFMC. The information collected will be used to satisfy regulatory objectives and analytical requirements, and to assist the CFMC in selecting policies that meet conservation and management goals and minimize, to the extent possible, any adverse economic impacts on fishery participants.

Affected Public: Business or other for-profit organizations.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at*dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk

Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 8, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–27562 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[Docket No. 010925233–2253–02]

Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

AGENCY: Department of Commerce (DoC).

ACTION: Notice.

SUMMARY: The notice amends the Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements. On October 1, 2001, the Department of Commerce (DoC) announced in the **Federal Register** (66 FR 49917) Department-wide requirements which pertain to information provided to applicants for funding under grants and cooperative agreements awarded by DoC.

DATES: This amendment is effective October 30, 2002.

FOR FURTHER INFORMATION CONTACT: Elizabeth Dorfman, Office of Executive Assistance Management, Telephone Number—202–482–4115.

SUPPLEMENTARY INFORMATION: The DoC is amending the Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements which was published in the **Federal Register** on October 1, 2001. This amendment updates provisions for review and approval of indirect cost rate proposals for those organizations for which DoC is cognizant or has oversight. In January 2002, the U. S. General Accounting Office issued Amendment No. 3, Independence, to the Government Auditing Standards. These new standards do not allow our Office of Inspector General to continue to perform these services, therefore, the Office of Executive Budgeting and Assistance Management, which is organizationally located under the DoC Chief Financial Officer and Assistant Secretary for Administration, will be responsible for the review of cost allocation procedures and negotiation of indirect cost rates for those organizations for which DoC is cognizant or has oversight. Therefore, DoC procedures for review, negotiation, and approval of indirect cost rates are being revised.

In the first column on page 49919, paragraph B.5.(c)(1) should be replaced with the following:

(1) For those organizations for which DoC is cognizant or has oversight, DoC or its designee either will negotiate a fixed rate for the recipient or, in some instances, will limit its review to evaluating the procedures described in the recipient's cost allocation methodology plan. Indirect cost rates and cost allocation methodology reviews are subject to future audits to determine actual indirect costs. Within 90 days of the award start date, the recipient shall submit to the address listed below documentation (indirect cost proposal, cost allocation plan, etc.) necessary to perform the review. The recipient shall provide the Grants Officer with a copy of the transmittal letter. Office of Executive Assistance Management, Department of Commerce, 14th Street and Constitution Avenue, NW., Room H–6022, Washington, DC 20230.

2. In the second column on page 49919, paragraph B.5.(c)(3) should be replaced with the following:

(3) If the recipient fails to submit the required documentation to DoC or other oversight or cognizant Federal agency within 90 days of the award start date, the Grants Officer may amend the award to preclude the recovery of any indirect costs under the award. If the DoC, oversight, or cognizant Federal agency determines there is a finding of good and sufficient cause to excuse the recipient's delay in submitting the documentation, an extension of the 90-day due date may be approved by the Grants Officer.

Classification Executive Order 12866

This notice has been determined to be ''not significant'' for purposes of Executive Order 12866, ''Regulatory Planning and Review.''

Administrative Procedure Act and Regulatory Flexibility Act

Notice and comment are not required under the Administrative Procedure Act (5 U.S.C. 553), or any other law, for this notice relating to public property, loans, grants, benefits, or contracts (5 U.SC. 553(a)). Because notice and comment are not required for this notice, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not required and has not been prepared for this notice.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Paperwork Reduction Act

This action does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act. Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection-of-information, subject to the requirements of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

List of Subjects

Accounting, Administrative practice and procedures, Grants administration, Grant programs-economic development, Grant programs-oceans, atmosphere and fisheries management, Grant programs-minority businesses, Grant programs-technology, Grant programs-telecommunications, Grant programs-international, Reporting and recordkeeping requirements.

Issued this 22nd day of October, 2002, in Washington, DC.

Robert F. Kugelman,

Director, Office of Executive Budgeting and Assistance Management.

[FR Doc. 02–27546 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–BW–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 49–2002]

Foreign-Trade Zone 38—Spartanburg, SC; Application for Subzone Status SAI Automotive USA d/b/a/ Faurecia Interior Systems (Automotive Interior Components), Fountain Inn, South Carolina

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Carolina State Ports Authority, grantee of FTZ 38, requesting special-purpose subzone status for the automotive interior components manufacturing plant of SAI Automotive USA d/b/a/ Faurecia Interior Systems (Faurecia IS) (a subsidiary of Faurecia S.A., of France), located in Fountain Inn, South Carolina. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on October 18, 2002.

The Faurecia IS plant (35 acres, 326,000 sq.ft.), is located at 101 International Boulevard, Fountain Inn (Laurens County), South Carolina, about 20 miles southeast of Greenville. The facility (670 employees) is used to produce automotive interior components—storage boxes, consoles, glove boxes, instrument panels, dash boards, bolsters, and door panels—for passenger motor vehicles manufactured in the U.S., as well as for export. Production activity involves injection molding, blow molding, painting, and assembly using domestic and foreign-origin inputs. Components and materials purchased from abroad (representing up to 25% of material value) include: polypropylene, PVC foil and sheet, rubber straps and mats, carpet sets, floor mats, fasteners, speakers, switches, airbag straps/frames/brackets, retainers, inserts and related items under HTSUS 8708.99.8080, vents, knobs, air ducts, sun visors, consoles, grab handles, plates, fabrics (Category 229) and sun shades (duty rates: 2.5–8.5%). FTZ procedures would exempt Faurecia IS from Customs duty payments on the foreign items used in production for export to non-NAFTA countries. On domestic shipments transferred in-bond to U.S. automobile assembly plants with subzone status, no duties would be paid on foreign-origin materials and components used in auto production under FTZ procedures until the finished vehicles are entered for domestic consumption, at which time the finished auto duty rate (2.5%) would be applied to the foreign-origin component parts and materials. For the individual interior components withdrawn from the proposed subzone for Customs entry, Faurecia IS would be able to choose the finished auto part duty rate (2.5%) for the foreign-origin items noted above. The application indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building-Suite 4100W, 1099 14th Street, NW, Washington, DC 20005; or,

2. *Submissions via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Ave., NW, Washington, DC 20230.

The closing period for their receipt is *[December 30, 2002].* Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period *[to January 13, 2003].*

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address No.1 listed above and at the Office of the Port Director, U.S. Customs Service, 150–A West Phillips Road, Greer, SC 29650.

Dated: October 18, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–27632 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–803]

Industrial Nitrocellulose from Germany: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

EFFECTIVE DATE: October 30, 2002

FOR FURTHER INFORMATION CONTACT: Ron Trentham or Tom Futtner, Group II, Office 4, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–6320 or 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

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 to the Tariff Act of 1930 (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 CFR Part 351 (2002).

Background

On July 1, 2002, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the antidumping duty order on industrial nitrocellulose (INC) from Germany (67 FR 44172).

On August 27, 2002, pursuant to a request made by Wolff Walstrode AG (Wolff), a producer and exporter of INC, the Department initiated an administrative review of the antidumping duty order on INC from Germany. On October 16, 2002, Wolff withdrew its request for an administrative review of INC from Germany.

Rescission of Review

Section 351.213(d)(1) of the Department's regulations provides that a party that requests an administrative review may withdraw the request within 90 days after the date of publication of the notice of initiation of the requested administrative review. The Department is rescinding the administrative review of the order on INC from Germany for the period July 1, 2001 through June 30, 2002, because the requesting party has withdrawn its request for this administrative review within the 90–day time limit, and no other interested parties have requested a review of INC from Germany for this time period.

This notice is in accordance with section 777(i)(1) of the Act and 19 CFR 251.213(d)(4).

Dated: October 24, 2002.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–27628 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–807]

Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 1, 2002, the Department of Commerce published the preliminary results of the administrative

review of the antidumping duty order on certain steel concrete reinforcing bars from Turkey (67 FR 21634). This review covers five manufacturers/exporters of the subject merchandise to the United States. The period of review is April 1, 2000, through March 31, 2001. We are rescinding the review with respect to Diler Demir Celik Endustrisi ve Ticaret A.S., Yazici Demir Celik Sanayi ve Ticaret A.S., and Diler Dis Ticaret A.S.; and ICDAS Celik Enerji Tersane ve Ulasim Sanayi, A.S. because these companies had no entries of subject merchandise to the United States during the period of review.

Based on our analysis of the comments received, we have made changes in the margin calculations for one company. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: October 30, 2002.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Elizabeth Eastwood, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone (202) 482–0656 and (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (2001).

Background

This review covers five manufacturers/exporters (*i.e.*, Colakoglu Metalurji A.S. (Colakoglu), Diler Demir Celik Endustrisi ve Ticaret A.S., Yazici Demir Celik Sanayi ve Ticaret A.S., and Diler Dis Ticaret A.S. (collectively, ''Diler''), Ekinciler Holding A.S. and Ekinciler Demir Celik A.S. (collectively, ''Ekinciler''), HABAS Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas), and ICDAS Celik Enerji Tersane ve Ulasim Sanayi, A.S. (ICDAS)).

On May 1, 2002, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on certain steel concrete reinforcing bars (rebar) from Turkey. *See Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results of Antidumping Duty Administrative Review,* 67 FR 21634 (May 1, 2002) *(Preliminary Results).*

In May and August, 2002, respectively, Diler and ICDAS notified the Department that they did not have shipments and/or entries of subject merchandise to the United States. Because we were able to confirm this with the Customs Service, in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are rescinding our review for Diler and ICDAS. For further discussion, see the ''Partial Rescission of Review'' section of this notice, below.

We invited parties to comment on our preliminary results of review. In May and June, 2002, we received case briefs from the petitioner (AmeriSteel Corporation), Colakoglu, and Ekinciler. In June 2002, we received rebuttal briefs from the petitioner, Ekinciler, and Habas. In addition, from June through September 2002, at our request we received supplemental information related to the depreciation expenses reported by Ekinciler.

The Department held a hearing on July 10, 2002, at the request of the petitioner.

On August 19, 2002, the Department postponed the final results of this review, pursuant to 19 CFR 351.213(h)(2). *See Certain Steel Concrete Reinforcing Bars from Turkey; Notice of Extension of Time Limits for Final Results of Antidumping Duty Administrative Review,* 67 FR 53778 (Aug. 19, 2002).

The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of the Order

The product covered by this order is all stock deformed steel concrete reinforcing bars sold in straight lengths and coils. This includes all hot-rolled deformed rebar rolled from billet steel, rail steel, axle steel, or low-alloy steel. It excludes (i) plain round rebar, (ii) rebar that a processor has further worked or fabricated, and (iii) all coated rebar. Deformed rebar is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7213.10.000 and 7214.20.000. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Period of Review

The period of review (POR) is April 1, 2000, through March 31, 2001.

Partial Rescission of Review

As noted above, Diler and ICDAS notified the Department that they had no shipments and/or entries of subject merchandise to the United States during the POR. We have confirmed this with the Customs Service. Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we are rescinding our review with respect to Diler and ICDAS. (*See, e.g., Certain Welded Carbon Steel Pipe and Tube from Turkey; Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 63 FR 35190, 35191 (June 29, 1998); and *Certain Fresh Cut Flowers from Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 62 FR 53287, 53288 (Oct. 14, 1997).)

Cost of Production

As discussed in the *Preliminary Results,* we conducted an investigation to determine whether the respondents participating in the review made home market sales of the foreign like product during the POR at prices below their costs of production (COPs) within the meaning of section 773(b)(1) of the Act. We performed the cost test for these final results following the same methodology as in the *Preliminary Results,* except as discussed in the accompanying ''Issues and Decision Memorandum'' (Decision Memo) from Richard W. Moreland, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated October 24, 2002.

We found 20 percent or more of each respondent's sales of a given product during the reporting period were at prices less than the weighted-average COP for this period. Thus, we determined that these below-cost sales were made in ''substantial quantities'' within an extended period of time and at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. *See* sections 773(b)(2)(B), (C), and (D) of the Act.

Therefore, for purposes of these final results, we found that Colakoglu, Ekinciler, and Habas made below-cost sales not in the ordinary course of trade. Consequently, we disregarded these sales for each respondent and used the remaining sales as the basis for determining normal value, pursuant to section 773(b)(1) of the Act.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Decision Memo, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099, of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov.* The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. These changes are discussed in the relevant sections of the Decision Memo.

Final Results of Review

We determine that the following weighted-average margin percentages exist for the period April 1, 2000, through March 31, 2001:

Manufacturer/producer/exporter	Margin percentage
Colakoglu Metalurji A.S.	5.31
Ekinciler Holding A.S./Ekinciler Demir Celik A.S.	0.04
HABAS Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S.	0.27

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), for Habas, we have calculated an importer-specific assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales. Regarding Colakoglu and Ekinciler, for assessment purposes, we do not have the information to calculate entered value because these companies are not the importers of record for the subject merchandise. Accordingly, we have calculated importer-specific duty assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* ratios based on the export prices. We will direct the Customs Service to assess the resulting assessment rates uniformly on all entries of that particular importer made during the POR. Pursuant to 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent). The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of rebar from Turkey entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates indicated above; (2) for previously investigated companies not listed above, 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, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 16.06 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 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 doubled antidumping duties.

This notice also serves as the only reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: October 24, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memo

Comments

1. Model Matching Hierarchy
2. Clerical Errors in the Preliminary Results
3. Treatment of Ekinciler's U.S. Sales
4. Financing Expenses for Ekinciler
5. Depreciation Expenses for Ekinciler

[FR Doc. 02–27631 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–817]

Certain Cut-to-Length Carbon-Quality Steel Plate from France: Notice of Court Decision and Suspension of Liquidation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 24, 2002, in *GTS Industries S.A. v. United States*, Consol. Court No. 00–03–00118, Slip Op. 02–115 (CIT 2002), a lawsuit challenging the Department of Commerce's (''the Department's'') *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from France*, 64 FR 73277 (December 29, 1999) (''*French Plate*''), the Court of International Trade (''CIT'') affirmed the Department's second remand redetermination and entered a judgment order. In this redetermination, the Department reviewed the record evidence regarding the facts and circumstances, including the terms of the sale, of the privatization of Usinor (which owned a majority interest in GTS Industries S.A. (''GTS'') prior to 1996 and a minority interest during the period of investigation (''POI'')), and concluded that no countervailable subsidies were attributable to GTS following the privatization transaction.

As a result of the redetermination, the countervailable subsidy rate for the subject merchandise produced and sold by GTS during the POI was reduced

from 6.86 percent to 0.00 percent *ad valorem*.

This redetermination was not in harmony with the Department's original final determination in *French Plate*. Consistent with the decision of the U.S. Court of Appeals for the Federal Circuit (''CAFC'') in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (''*Timken*''), the Department will continue to order the suspension of liquidation of the subject merchandise until there is a ''conclusive'' decision in this case. If the case is not appealed, or if it is affirmed on appeal, the Department will instruct the U.S. Customs Service to terminate the suspension of liquidation for all entries of certain cut-to-length carbon-quality steel plate from France.

EFFECTIVE DATE: October 30, 2002.

FOR FURTHER INFORMATION CONTACT: Jesse Cortes, AD/CVD Enforcement Group I, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–3986.

SUPPLEMENTARY INFORMATION:

Background

In *French Plate*, using the change-in-ownership methodology in place at that time, the Department determined that countervailable subsidies were being provided to producers and exporters of certain cut-to-length carbon-quality steel plate from France. GTS challenged this determination before the CIT.

On February 2, 2000, the CAFC ruled in *Delverde SRL v. United States*, 202 F.3d 1360 (Fed. Cir. 2000), *reh'g granted in part*, (June 20, 2000) (''*Delverde III*''), that:

the Tariff Act as amended does not allow Commerce to presume conclusively, pursuant to a *per se* rule, that the subsidies granted to the former owner of Delverde's corporate assets automatically 'passed through' to Delverde following the sale. Rather, the Tariff Act requires that Commerce make such a determination by examining the particular facts and circumstances of the sale and determining whether Delverde directly or indirectly received both a financial contribution and benefit from the government.

202 F.3d at 1364. The methodology analyzing Delverde's change in ownership and struck down by the CAFC in *Delverde III* was similar to that employed in *French Plate*. Accordingly, the Department asked the CIT to remand the *French Plate* proceeding for reconsideration in light of Delverde III. The parties consented to this remand.

On August 9, 2000, the CIT remanded the French Plate proceeding to the Department with instructions to: (1) ''determine the applicability, if any, of [*Delverde III*] to this proceeding, and (2) embark upon further fact finding, if appropriate.'' *GTS Industries S.A. v. United States*, Court No. 00–03–00118, Remand Order August 9, 2000, modified by Order August 24, 2000.

On December 22, 2000, following a comment period, the Department issued the *Final Results of Redetermination Pursuant to Court Remand*. In that redetermination, in light of *Delverde III*, the Department analyzed the facts and circumstances of the privatization transaction to determine whether the person to whom countervailable subsides had been given in the past was essentially the same person after privatization. Among the facts and circumstances considered, the Department examined the continuity of general business operations, the continuity of production facilities, continuity of assets and liabilities, and retention of personnel before and after the privatization. Based on these factors, the Department determined that post-privatization Usinor was essentially the same person as pre-privatization Usinor. Consequently, because the Department had attributed a portion of Usinor's pre-privatization subsidies to GTS, these subsidies remained attributable to GTS following Usinor's privatization.

After briefing and a hearing, the CIT, on January 4, 2002[1], again remanded the *French Plate* proceeding to the Department. *GTS Industries S.A. v. United States*, 182 F. Supp. 2d 1369 (CIT 2002). The court explained that the central question was whether the Department's remand decision was consistent with the statute, as interpreted by the CAFC in *Delverde III*. The court found that *Delverde III's* requirements were as follows:

1.Section 1677(5) prohibits the Department from adopting any per se rule that a subsidy passes through, or is eliminated, as a result of a change in ownership. *Id.* at 1377.

2.The statute requires that the Department must look at the facts and circumstances of the entire transaction, including the terms of the sale, to determine if the purchaser/new owner received, directly or indirectly, a subsidy for which it did not pay adequate compensation. In other words, the Department must find that the purchaser/new owner indirectly received a subsidy from the government. *Id.* at 1377–1380.

The Court specifically rejected, as contrary to *Delverde III*, the Department's argument that, if the pre and post-privatization companies are, in substance, the same legal person, the Department is not required to determine anew whether that same person has received a subsidy.

On June 3, 2002, following a comment period, the Department issued its *Results of Redetermination Pursuant to Court Remand*. In this second redetermination, the Department re-analyzed certain facts and circumstances of the privatization of Usinor, including the terms of the sale. The Department determined that: 1) some purchasers of Usinor's shares paid full, fair-market value for those shares and, thus, received no subsidy from the privatization transaction; and 2) other purchasers that did not pay full, fair-market value did receive a subsidy from the privatization transaction. However, regarding the purchasers that did not pay full, fair-market value, while they did receive a subsidy, the Department determined that this subsidy was not countervailable because it was conferred on the owners of the company, and not on the company itself. Consequently, the Department concluded that Usinor (and, thus, GTS) received no countervailable subsidies as a result of the privatization transaction. Accordingly, the Department recalculated a subsidy rate of 0.00 percent *ad valorem* for GTS for the POI.

The CIT affirmed the *Results of Redetermination Pursuant to Court Remand* on September 24, 2002. See GTS Industries S.A. v. United States, Consol. Court No. 00–03–00118, Slip Op. 02–115 (CIT 2002).

Suspension of Liquidation

The CAFC, in *Timken*, held that the Department must publish notice of a decision of the CIT or the CAFC which is not ''in harmony'' with the Department's final determination. Publication of this notice fulfills that obligation. The CAFC also held that the Department must suspend liquidation of the subject merchandise until there is a ''conclusive'' decision in the case. Therefore, pursuant to *Timken*, the Department must continue to suspend liquidation pending the expiration of the period to appeal the CIT's September 24, 2002, decision or, if that decision is appealed, pending a final decision by the CAFC. The Department will instruct the Customs Service to liquidate relevant entries covering the subject merchandise effective October 30, 2002, in the event that the CIT's

[1] The Court's Memorandum Opinion and Order is dated January 4, 2002, however, the order establishing the time frame for the remand is dated January 7, 2002.

ruling is not appealed, or if appealed and upheld by the CAFC.

Dated: October 23, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–27630 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–815]

Stainless Steel Sheet and Strip in Coils from France: Notice of Court Decision and Suspension of Liquidation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 24, 2002, in *Allegheny Ludlum Corp. v. United States*, Consol. Court No. 99–09–00566, Slip Op. 02–114, a lawsuit challenging the Department of Commerce's (''the Department's'') *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from France*, 64 FR 30774 (June 8, 1999) (''*French Stainless*''), the Court of International Trade (''CIT'') affirmed the Department's second remand redetermination and entered a judgment order. In this redetermination, the Department reviewed the record evidence regarding the facts and circumstances of the privatization of Usinor, Ugine S.A., and Uginox Sales Corporation (collectively ''Usinor''), including the terms of the sale, and concluded that Usinor received no countervailable subsidies as a result of the privatization transaction.

As a result of the redetermination, the countervailable subsidy rate for the subject merchandise produced and sold by Usinor during the period of investigation (''POI'') was reduced from 5.38 percent to 0.00 percent *ad valorem*.

This redetermination was not in harmony with the Department's original final determination in *French Stainless*. Consistent with the decision of the U.S. Court of Appeals for the Federal Circuit (''CAFC'') in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (''*Timken*''), the Department will continue to order the suspension of liquidation of the subject merchandise until there is a ''conclusive'' decision in this case. If the case is not appealed, or if it is affirmed on appeal, the Department will instruct the U.S. Customs Service to terminate the suspension of liquidation for all entries of stainless steel sheet and strip in coils from France.

EFFECTIVE DATE: October 30, 2002.

FOR FURTHER INFORMATION CONTACT: Jesse Cortes, AD/CVD Enforcement Group I, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–3986.

SUPPLEMENTARY INFORMATION:

Background

In *French Stainless*, using the change-in-ownership methodology in place at that time, the Department determined that countervailable subsidies were being provided to producers and exporters of stainless steel sheet and strip in coils from France. Usinor challenged this determination before the CIT.

On February 2, 2000, the CAFC ruled in Delverde SRL v. United States, 202 F.3d 1360 (Fed. Cir. 2000), *reh'g granted in part*, (June 20, 2000) (''*Delverde III*''), that:

the Tariff Act as amended does not allow Commerce to presume conclusively, pursuant to a per se rule, that the subsidies granted to the former owner of Delverde's corporate assets automatically 'passed through' to Delverde following the sale. Rather, the Tariff Act requires that Commerce make such a determination by examining the particular facts and circumstances of the sale and determining whether Delverde directly or indirectly received both a financial contribution and benefit from the government.

202 F.3d at 1364. The methodology analyzing Delverde's change in ownership and struck down by the CAFC in *Delverde III* was similar to that employed in *French Stainless*. Accordingly, the Department asked the CIT to remand the *French Stainless* proceeding for reconsideration in light of *Delverde III*. The parties consented to this remand.

On August 15, 2000, the CIT remanded the *French Stainless* proceeding to the Department with instructions to issue a determination consistent with United States law, interpreted pursuant to all relevant authority, including the CAFC decision in *Delverde III. Allegheny Ludlum Corp., et al v. United States*, Court No. 99–09–00566, Remand Order dated August 15, 2000.

On December 20, 2000, following a comment period, the Department issued the *Final Results of Redetermination Pursuant to Court Remand*. In that redetermination, in light of *Delverde III*, the Department analyzed the facts and circumstances of Usinor's privatization transaction to determine whether the person to whom countervailable subsidies had been given in the past was essentially the same person after privatization. Among the facts and circumstances considered, the Department examined the continuity of general business operations, the continuity of production facilities, continuity of assets and liabilities, and retention of personnel before and after the privatization. Based on these factors, the Department determined that post-privatization Usinor was essentially the same person as pre-privatization Usinor. Consequently, the pre-privatization subsidies remained attributable to Usinor following its privatization.

After briefing and a hearing, the CIT, on January 4, 2002[1], again remanded the *French Stainless* proceeding to the Department. *Allegheny Ludlum Corp. v. United States*, 182 F. Supp. 2d 1357 (CIT 2002). The court explained that the central question was whether the Department's remand redetermination was consistent with the statute, as interpreted by the CAFC in *Delverde III*. The court found that *Delverde III's* requirements were as follows:

1. Section 1677(5) prohibits the Department from adopting any per se rule that a subsidy passes through, or is eliminated, as a result of a change in ownership. *Id.* at 1377.
2. The statute requires that the Department must look at the facts and circumstances of the entire transaction, including the terms of the sale, to determine if the purchaser/new owner received, directly or indirectly, a subsidy for which it did not pay adequate compensation. In other words, the Department must find that the purchaser/new owner indirectly received a subsidy from the government. *Id.* at 1377–1380.

The Court specifically rejected, as contrary to *Delverde III*, the Department's argument that, if the pre- and post-privatization companies are, in substance, the same legal person, the Department is not required to determine anew whether that same person has received a subsidy.

On June 3, 2002, following a comment period, the Department issued its *Results of Redetermination Pursuant to Court Remand*. In this second redetermination, the Department re-analyzed certain facts and circumstances of the privatization of Usinor, including the terms of the sale. The Department determined that: 1)

[1] The Court's Memorandum Opinion and Order is dated January 4, 2002, however, the order establishing the time frame for the remand is dated January 7, 2002.

some purchasers of Usinor's shares paid full, fair-market value for those shares and, thus, received no subsidy from the privatization transaction; and 2) other purchasers that did not pay full, fair-market value did receive a subsidy from the privatization transaction. However, regarding the purchasers that did not pay full, fair-market value, while they did receive a subsidy, the Department determined that this subsidy was not countervailable because it was conferred on the owners of the company, and not on the company itself. Consequently, the Department concluded that Usinor received no countervailable subsidies as a result of the privatization transaction, and recalculated a subsidy rate of 0.00 percent *ad valorem* for Usinor for the POI.

The CIT affirmed the *Results of Redetermination Pursuant to Court Remand* on September 24, 2002. *See Allegheny Ludlum Corp., et al. v. United States*, Consol. Court No. 99–09–00566, Slip. Op. 02–114 (CIT 2002).

Suspension of Liquidation

The CAFC, in *Timken*, held that the Department must publish notice of a decision of the CIT or the CAFC which is not ''in harmony'' with the Department's final determination. Publication of this notice fulfills that obligation. The CAFC also held that the Department must suspend liquidation of the subject merchandise until there is a ''conclusive'' decision in the case. Therefore, pursuant to *Timken*, the Department must continue to suspend liquidation pending the expiration of the period to appeal the CIT's September 24, 2002, decision or, if that decision is appealed, pending a final decision by the CAFC. The Department will instruct the Customs Service to liquidate relevant entries covering the subject merchandise effective October 30, 2002, in the event that the CIT's ruling is not appealed, or if appealed and upheld by the CAFC.

Dated: October 23, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–27629 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Notice With Respect to Modification of Tariff Rate Quotas on the Import of Certain Worsted Wool Fabrics

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Notice.

SUMMARY: The Department of Commerce hereby provides notice that it has received no requests for the modification of the limitations on the quantity of imports of certain worsted wool fabric under the 2003 tariff rate quotas established by the Trade and Development Act of 2000, as amended by the Trade Act of 2002. The Department therefore will not consider modification of these limitations.

FOR FURTHER INFORMATION CONTACT: Sergio Botero, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Background

Title V of the Trade and Development Act of 2000 (the Act of 2000) creates two tariff rate quotas, providing for temporary reductions in the import duties on two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers. For worsted wool fabric with average fiber diameters greater than 18.5 microns (Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11), the reduction in duty was limited by the Act of 2000 to 2,500,000 square meter equivalents per year. This limitation was amended by Section 5102 of the Trade Act of 2002 to 3,500,000 square meters equivalents in calendar year 2002 and 4,500,000 square meter equivalents in calendar years 2003 through 2005. For worsted wool fabric with average fiber diameters of 18.5 microns or less (HTS heading 9902.51.12), the reduction was limited by the Act of 2000 to 1,500,000 square meter equivalents per year. This limitation was amended by Section 5102 of the Trade Act of 2002 to 2,500,000 square meters equivalents in calendar year 2002 and 3,500,000 square meter equivalents in calendar years 2003 through 2005.

The Act requires the annual consideration of requests by U.S. manufacturers of men's or boys' worsted wool suits, suit-type jackets and trousers for modification of the limitation on the quantity of fabric that may be imported under the tariff rate quotas, and grants the President the authority to proclaim modifications to the limitations not to exceed 1,000,000 square meter equivalents per year for each tariff rate quota. Authority to consider such requests was delegated to the Secretary of Commerce in Presidential Proclamation 7383 (December 1, 2000). On January 22, 2001, the Department published regulations establishing procedures for considering requests for modification of the limitations (66 FR 6459, 15 CFR 340).

On September 25, 2002, the Department published a notice in the Federal Register soliciting requests for modification of the limitation on the quantity of imports under the 2003 tariff rate quotas (67 FR 60224). No requests were received in response to this solicitation. As a result, the Department will not consider modification of these limits.

Dated: October 24, 2002.

D. Michael Hutchinson,

Acting Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods Industries.

[FR Doc.02–27531 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No. 000724218–2233–04]

Solicitation of Applications for the Native American Business Development Center (NABDC) Program

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: Subject to the availability of fiscal year 2003 funds, the Minority Business Development Agency (MBDA) is soliciting competitive applications, under its Native American Business Development Center (NABDC) Program, from organizations to operate a NABDC in the State of New Mexico. After reviewing the performance of the current operator of the New Mexico NABDC, MBDA has elected not to continue funding in 2003 for the operator and to re-compete this geographic service area.

DATES: The closing date for applications for the NABDC project is November 29, 2002. MBDA anticipates that the award for the NABDC program will be made with a start date of January 1, 2003. Completed applications for the NABDC program must be (1) mailed (USPS postmark) to the NABDC Program Office (see: **ADDRESSES**); or (2) received by MBDA (see: **ADDRESSES**) no later than 5 p.m. Eastern Time.

ADDRESSES: If the applicant or its representative mails the application, it must be mailed to: Native American Business Development Center Program Office, Office of Executive Secretariat, HCHB, Room 5063, Minority Business Development Agency, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

If the application is hand-delivered by the applicant or its representative, the application must be delivered to Room 1874, which is located at Entrance #10, 15th Street, NW., between Pennsylvania and Constitution Avenues.

To submit an application electronically (see: **SUPPLEMENTARY INFORMATION**), you must go to *http://www.mbda.gov.*

FOR FURTHER INFORMATION CONTACT: For further information, contact MBDA's Dallas Regional Office at (214) 767–8001. This office is located at 1100 Commerce Street, Suite 726, Dallas, Texas 75242.

Pre-Application Conference: A Pre-Application Conference will be conducted on Wednesday, November 6, 2002 at 1 p.m. Central Time. The conference will be conducted at MBDA's Dallas Regional Office, 1100 Commerce Street, Suite 726, Dallas, Texas 75242. Proper identification is required for entrance into any Federal building.

SUPPLEMENTARY INFORMATION: Applications postmarked later than the closing date or received after the closing date and time will not be considered.

Applicants must submit one signed original plus two (2) copies of the application.

Applicants are encouraged to submit their proposal electronically via the World Wide Web. However, the following paper forms must be submitted with original signatures in conjunction with any electronic submissions by the closing date and time stated above: (1) The SF–424, Application for Federal Assistance; (2) the SF–424B, Assurances-Non-Construction Programs; (3) the SF–LLL (Rev. 7–97) Disclosure of Lobbying Activities (if applicable); (4) the CD–346, Applicant for Funding Assistance (if applicable); and (5) the CD–511, Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying. MBDA's web site address to submit an application on-line is *http://www.mbda.gov.* All required forms are located at this web address.

Failure to submit a signed, original SF–424 with the application, or separately in conjunction with submitting a proposal electronically, by the deadline will result in the application being rejected and returned to the applicant. Failure to sign and submit with the application, or separately in conjunction with submitting a proposal electronically, the other forms identified above by the deadline will automatically cause an application to lose two (2) points. Failure to submit other documents or information may adversely affect an applicant's overall score. MBDA shall not accept any changes, additions, revisions or deletions to competitive applications after the closing date for receiving applications, except through a formal negotiation process.

Authority: Executive Order 11625 and 15 U.S.C. 1512.

Catalog of Federal Domestic Assistance (CFDA): 11.801 Native American Business Development Center Program.

Program Description: In order for the proposals to receive consideration, applicants must comply with all information and requirements contained in this Notice.

The NABDC Program represents a significant programmatic and administrative enhancement of MBDA's traditional NABDC Program. In operation since 1982, the NABDCs provide generalized management and technical assistance and business development services to Native American business enterprises within their designated geographic service areas. The NABDC program described in this Notice updates the traditional NABDC model by leveraging the full benefit of telecommunications technology, including the Internet, and a variety of online computer resources to dramatically increase the level of service which the NABDCs can provide to their Native American business clients.

In addition, the NABDC Program guidelines further increase the impact of the NABDC projects by requiring that project operators not only deploy their business assistance services to the Native American business public directly, but that they also develop a network of strategic partnerships with third-party organizations located within the geographic service area. These strategic partnerships will be used to expand the reach of the NABDC project into communities and market segments that the project would have limited resources to cover otherwise, and are a key component of this program modification.

Individuals eligible for assistance under the NABDC Program are Native Americans, African Americans, Puerto Ricans, Spanish-speaking Americans, Aleuts, Asian Pacific Americans, Asian Indians, Eskimos and Hasidic Jews. References throughout this Notice to providing assistance to Native Americans also include eligible non-Native Americans listed in the preceding sentence. No service will be denied to any member of the eligible groups listed above.

For the past 18 years, MBDA has operated the NABDC Program as its approach for providing general business assistance and counseling to Native American business enterprises. MBDA established NABDCs in numerous cities throughout the country to assist in the development of local Native American firms. The NABDC Program was developed to address the needs of the majority of Native American-owned firms throughout the country at a basic level, and thus the traditional NABDCs are not designed to provide specialized expertise in any specific industry.

MBDA is now providing major enhancements to the NABDC Program, by leveraging the full benefit of telecommunications technology, including the Internet, and a variety of online computer-based resources to dramatically increase the level of service, which the new Centers can provide to their clients.

This approach also increases the reach of the Centers by requiring project operators to develop strategic alliances with public and private sector partners, as a means of reaching out to Native American firms within the project's geographic service area.

Background

MBDA traditionally operated as many as 10 Centers in strategic locations throughout the country, for the benefit of Native American entrepreneurs. MBDA selected locations for the establishment of these Centers based on the size of the population in those markets, and the number of Native American-owned companies, as established by U.S. Census Bureau data.

In addition, the enhanced NABDC Program is a mainstay of MBDA's overall business development efforts. The NABDC Program is at the core of the Agency's comprehensive strategy for addressing the needs of growing Native American firms. Under this strategy, MBDA has identified the following four types of services which an NABDC will generally be expected to provide:

Access to Markets—This involves assisting Minority Business Entrepreneurs (MBE) to identify and exploit opportunities for increased sales and revenue. Activities include conducting market analysis, identifying sales leads, bid preparation assistance, creating market promotions, and assistance in developing joint ventures and strategic alliances.

Access to Capital—This involves assisting MBEs to secure the financial capital necessary to start-up, and thereafter to fuel growth and expansion

of their businesses. Undercapitalization has been a major contributor to the failure of business ventures in the Native American community over the years. Hence the goal of this activity is to help Native American entrepreneurs obtain the amount of financing appropriate to the scope of the proposed business and, thereby, to help ensure the greatest likelihood of success for the Native American venture in the marketplace.

Management and Technical Assistance—This component of MBDA's approach involves assisting Native American firms in establishing, improving and/or successfully maintaining their business and/or to resolve key operational issues within the business. Such issues might include the need for a recruitment and hiring strategy, evaluating a capital equipment purchase, or developing internal operating procedures.

Education and Training—This involves providing basic education and training to Native American entrepreneurs on important business topics. Training should be hands-on, practical, and streamlined in order to reflect the time constraints of the typical small business owner. In addition, given the proliferation of online resources from MBDA as well as others, this training should be designed to educate MBEs in the use of the Agency's electronic business assistance tools and in the use of electronic commerce generally to better access suppliers, customers and information.

The NABDCs will operate through the use of trained professional business counselors who will assist Native American entrepreneurs through direct client engagements. To date, MBDA has served more than 20,000 Native American businesses through its Centers, enabling these companies to grow and expand, creating new jobs, increasing tax revenues, and contributing to the health of the overall economy.

Enhancing the NABDCs Through Technology

Over the past three years, MBDA has developed a variety of new technology tools designed to leverage the benefits of information technology to assist the Native American business community. In addition, the Agency has developed a high-speed network strategy capable of linking all of its Centers into a single virtual organization. The goal of MBDA's NABDC Program strategy is to deploy these technology enhancements to all of the NABDCs, and create a state-of-the-art environment for bringing Native American businesses continuously-updated information, access to resources anywhere in the country, and the best available assistance in any given subject area at any time. The implementation of this strategy is the Minority Business Internet Portal (MBIP).

MBDA's technology tools that will be made available to the NABDCs through MBDA's MBIP site include:

Phoenix/Opportunity—an electronic bid-matching system that alerts participating minority companies of contract and teaming opportunities directly via e-mail or fax. Procurement leads are transmitted to minority firms on a targeted basis according to the company's industry classification and geographic market. Firms seeking to participate in this program need only to transmit their company profile to MBDA online via the Agency's Phoenix application.

Resource Locator—a new and unique software application that allows Native American business enterprises to search for business resources and locate them on a map—interactively on the Internet. The Resource Locator can help Native American firms identify trade associations representing their industries, government licensing and permit offices, management and technical assistance providers, and a host of other resources quickly and efficiently, through Geographic Information Systems (GIS) technology.

Online Commercial Loan Identifier—an Internet-based tool that allows Native American enterprises to shop for commercial loans online, and identify the best available financing terms. The Commercial Loan Identifier is designed to give Native American firms the benefit of a nationwide market for commercial loan products.

Business and Market Planning Software—software packages to streamline and enhance the development of business plans, marketing plans and other strategic business documents.

The MBIP will serve as a very effective vehicle for enhancing the scope and service capability of the NABDC network. Through the portal site, each NABDC will receive a standardized electronic toolkit of business development tools and applications. This ''electronic toolkit'' will provide important programmatic benefits for the NABDCs.

Specifically:

These electronic tools will help to streamline the process of delivering client assistance to Native American business enterprises, giving the Centers the ability to service greater numbers of clients with existing resources.

In addition, MBDA expects that these electronic tools will be in high demand because of the significant added value that they are able to create for business enterprises. Demand for these tools will further enhance the position of the NABDCs as important resources within their local markets.

Finally, by participating in MBDA's nationwide high-speed network, each NABDC will be able to access the latest information regarding best practices, emerging market trends, success strategies, and other activities in the Native American business development arena.

Current trends in technology, procurement streamlining, globalization, and a host of other market factors have had a dramatic impact on the Native American business community. Native American-owned businesses, regardless of their industry, now find themselves subject to rapidly changing market conditions. To ensure their continued growth, these firms will need access to the best available information and expertise on a continuously updated basis. The new NABDC Program, combined with the MBIP site, directly respond to this need, by leveraging MBDA's traditional business development infrastructure through state-of-the-art technology and communications.

Work Requirements

The work requirements specify the duties and responsibilities of each recipient operating an NABDC.

Although it is not necessary for the applicant to have an office in the geographic service area, the NABDC office must be strategically located in the geographic service area to ensure that it is close to the available public and private sector resources, within a reasonable commuting distance to the minority business community, and accessible to public transportation. The NABDC must be opened and be fully operational within 30 days after receipt of the award. Fully operational means that all staff are hired, all signs are up, all items of furniture and equipment are in place and operational, and the NABDC's doors have been fully opened to the public for service.

An NABDC operator must provide services to all eligible clients within its specified geographic service area. In addition, each operator must contribute its efforts to help support MBDA's online business assistance network as established by Agency policies.

NABDCs are required to perform work in four basic areas:

Market Building—To identify, develop and leverage public and private

sector resources and business opportunities for their clients;

(a) *Market Research and Development* which systematically investigates the service area market to see what business and capital opportunities exist for Native American business enterprise development; search for sources of capital, sales opportunities, business buy-outs and new start possibilities; bring the research to a practical level of utility to fit the capability and needs of specific MBE client firms of the area. As market research is conducted, the NABDC will make optimum use of the MBDA network to ensure that the information is made available to fellow operators, and to MBEs throughout the country.

(b) *Market Promotion* which promotes Native American business development in the local business community by obtaining support from the community as a whole, leverages resources for minority businesses and informs potential and current minority businesses of the availability of business development services through the NABDC.

The NABDC will promote individual firms to the public and private sectors to make the market aware of the capability, talent and capacity of the local MBE firms. The NABDC may utilize public service announcements and paid advertising.

The NABDC promotes MBEs at local Chambers of Commerce, business and trade associations, corporate and company trade fairs and meetings, state and local government agency purchasing departments, economic development and planning offices and MBE development events. In addition, the NABDC shall promote and participate in MED Week activities involving the full participation of the private and public sectors. MED Week is a major annual event of MBDA on both the local and national levels.

Under this function, the NABDC shall carry out a plan-of-action that may include, but is not limited to, the following actions: (1) Publicize the NABDC and its services throughout the geographic service area; (2) Organize press briefings or distribute press releases for area newspapers; (3) Deliver speeches before key Native American audiences in the NABDC service area; (4) Secure a list of service area Native American vendors who are listed in MBDA's Phoenix System and use them in market promotion activities; (5) Interface with Native American Chambers of Commerce and trade associations for access to their mailing lists; (6) Communicate with bankers and other officers of financial institutions for possible referrals of Native American entrepreneurs as existing prospective Native American clients to the NABDC; (7) Identify existing lists of successful Native American managers, professionals, technical experts and skilled crafts-people, who may have an interest in or exhibit qualifications for business ownership; (8) Develop an NABDC brochure for mail-out and distribution to the public, as well as for inclusion on the MBDA Web site; and (9) E-mail information and/or newsletters to existing and prospective local Native American entrepreneurs.

c. *Resource and Inventory Development* which identifies local opportunities and resources as well as local Native American businesses, qualified to take advantage of them. This requirement will enable the NABDC to support the maintenance of content for the Phoenix/Opportunity application and other online systems as well as to track local market trends and market demand for goods and services. Under this function, the NABDC must (1) Develop and maintain inventories of area opportunities and resources, which should include: *Electronic Commerce*—information technology affecting the marketability of its clients, i.e., access to new markets, access to capital and business opportunities and other resources; *Market Opportunities*—both in the public sector (Federal, state and local) and in the private sector (foreign and domestic); *Capital Opportunities*—*e.g.*, loans, bonds, trade credits, and equity investments; *Business Ownership Opportunities*—*e.g.*, franchises, licensing arrangements, mergers and buy-outs; *Education and Training Opportunities*— *e.g.*, educational institution programs and other training resources; (2) Register eligible local Native American firms in MBDA's Phoenix database, which is a national inventory of Native American vendor firms capable of selling their goods and services to the public and private sector.

(d) *Match Opportunities and Close Transactions* which matches eligible Native American entrepreneurs with specific viable businesses, market and/or capital opportunities. This function contributes to an NABDC's financial packaging and/or procurement performance goals, and is the *only* market development function outside of the standard client business assistance in which a portion of an NABDC's time can be directly associated to *individual* Native American business clients and resource customers. This client specific time, no matter how small, is considered client assistance and may be subject to client fees. Under this function, the NABDC shall match qualified Native American entrepreneurs with identified opportunities and resources by: (1) Accessing vendor information systems, including the Phoenix/Opportunity database; (2) Maintaining a constant awareness of the Native American firms that operate within the geographic service area and their capabilities; (3) Maintaining direct contact with purchasing executives, government procurement officials, banking officials and others so that representatives of the NABDC are in a position to learn about available business opportunities, both formally and informally; (4) Engaging in relationship brokering between purchasing organization and individual Native American firms capable of fulfilling their requirements; and (5) Assisting in direct negotiations between purchasing organization and individual Native American firms, in appropriate cases, in order to help resolve issues, serve as an advocate for the Native American firm, or otherwise assist in bringing the transaction to closure.

Client Services—To provide direct client assistance to Native American business enterprise on the basis of individualized professional engagements. Under these duties, the NABDC shall assist Native American firms and individuals, which have agreed in writing to become clients, in establishing, improving and/or successfully maintaining their businesses. All new clients shall be entered into the Performance database and registered in the Phoenix System. It is required that clients and their service hours should be entered in the Performance database on a regular basis, preferably weekly.

This assistance is defined as the function by which the NABDC provides direct services to its clients. It may range from general counseling to the identification, analysis and resolution of specific business problems. Clients assisted more than once during the funding period may only be counted once in that funding period. Group sessions are one method an NABDC can use to provide business development services to Native American clients. This function may be subject to client fees and directly contributes to an NABDC's performance goals.

Under this function, the NABDC shall provide assistance to eligible Native American firms and individuals (as referenced in Executive Orders 11625 and 12432) seeking assistance from the NABDC, including 8(a) certified and graduate firms. However, the NABDC shall not perform or engage in the operation of a firm. Client services include, but are not limited to, the

following types of assistance: (1) *Marketing*, *e.g.*, market research, promotion, advertising and sales, sales forecasting, market feasibility studies, pricing, procurement assistance, product and customer service, brochure design (excludes mass printing), and general counseling; (2) *Finance and Accounting*, *e.g.*, capital budgeting, general accounting, break-even analysis, cost accounting, financial planning and analysis budgeting, tax planning, financial packaging, general counseling, and mergers and acquisitions (excludes bookkeeping, tax preparation, and audits); (3) *Manufacturing*, *e.g.*, plant location and site selection, plant management, materials handling and distribution, total quality management, metrication for world market, and general counseling; (4) *Construction and Assistance*, *e.g.*, estimating, bid preparation, bonding, take-offs, and general counseling; (5) *International Trade Assistance*, *e.g.*, exporting, importing, letters of credit, bank draft, dealerships, agencies, distributorship, exporting trading companies, joint ventures, general counseling, and freight forwarding and handling; (6) *Administration*, *e.g.*, office management, procedures and systems, inventory control, purchasing, total quality management, awareness of metric system, and general counseling; (7) *Personnel*, *e.g.*, human resource management, job evaluation and rating system, training, and general counseling; (8) *General Management*, *e.g.*, organization and structure, formulating corporate policy, feasibility studies, reports and controls, public relations, staff scheduling, legal services (excludes litigation), business planning, organizational development, bid preparation, and general counseling.

In order to stay competitive in the increasingly global economy, Native American business owners should consider ISO 9000 or other quality assurance standards. The NABDC must have knowledge of what these standards are, how to properly implement the standards, and how to obtain ISO 9000 Quality System certification for its clients.

The one-on-one assistance to any client shall be limited to no more than 250 hours per funding period unless prior approval is requested from the appropriate MBDA Regional Director, and approved by the Grants Officer of the Department of Commerce.

3. *Operational Quality*—To maintain the efficiency and effectiveness of its overall operations as well as the quality of its client services. These duties are the means by which an NABDC maintains the efficiency and effectiveness of its overall operations as well as the quality of its client services. The function directly contributes to an NABDC's overall qualitative evaluation and rating as well as the successful completion of all work requirements. Under this function, the NABDC shall: (1) Execute signed work plan agreements and engagement letters with clients; (2) Formally describe the methodology that will be used in achieving the work plan objectives for each client; (3) Input progress/results to the performance database in a timely manner; (4) Establish procedures for collecting and accounting for all fees charged to clients; (5) Maintain records/files for all work charged to the program and clients; (6) Obtain *written* acceptance and verification (with client signatures) of services provided to its clients. For services reported, documentation must be in the NABDC's client files within 30 days after the end of every quarter in which a client receives services; (7) Comply with all reporting requirements provided upon award; (8) Cooperate with MBDA in maintaining content for the Phoenix/Opportunity database, Resource Locator, and other online tools located at *http://www.mbda.gov;* and (9) Promote and utilize the services and resources of other MBDA programs, sponsored efforts and/or voluntary activities. The NABDC shall identify MBDA as the funding sponsor by providing signs worded as follows:

_____
(geographic area)
Native American Business Development Center ™ Operated by _____

_____
Funded By:
Minority Business Development Agency (MBDA), U.S. Department of Commerce

These signs should be highly visible to the NABDC clients and general public. They should be prominently displayed on entrances and doors. Include the name of MBDA on all stationery, letterhead, brochures, etc. The NABDC is *not* authorized to use either the Department's official seal or the MBDA logo in any of its publications, documents or materials without specific written approval from the U.S. Department of Commerce. Identify the NABDC immediately when answering the telephone. If the recipient also requires that its organization's name be given, it should be provided only *after* the NABDC has been verbally identified to a caller. Refer to MBDA in all advocacy and outreach efforts such as speaking engagements, news conferences, etc.

The term Native American Business Development Center (NABDC) is a trademark of the Federal Government, and the Government reserves exclusive rights in the term. Permission to use the term is granted to the award recipient for the sole purpose of representing the activities of the award recipient in the fulfillment of the terms of the financial assistance award. The Minority Business Development Agency reserves the right to control the quality of the use of the term by the award recipient. Whenever possible, for example in promotional literature and stationery, use the ™ designation as in Native American Business Development Center ™.

Developing and Maintaining a Network of Strategic Partners

The work requirements for an award recipient under the NABDC Program include the development of a network of 3 alliances between the NABDC and key strategic partners selected by the recipient. The NABDC is required to establish the network of 3 Strategic Partners within 120 days after the award. The NABDC is required to maintain these alliances throughout the duration of the award. The NABDC must replace a Strategic Partner within 45 days after termination of a previously established alliance. The Strategic Partners shall be public or private sector organizations located within the project's geographic service area that are positioned to assist the project to achieve its goals for assisting the minority business community established under the terms of the award. Strategic Partners may include:

Minority Business Enterprise (MBE) programs operated by state, county or city governments;

Chambers of Commerce or trade associations focused on the needs of the Native American business community;

Small Business Development Centers, or other college and university entrepreneurial development programs;

Community Development Corporations (CDCs);

Banks and financial institutions; and

Faith organizations having economic development components, whose activities are *not* used for purposes the essential thrust of which is sectarian.

Each Strategic Partner shall be evidenced by a written Memorandum of Understanding (MOU) that expressly sets forth the conditions under which the partners agree to operate. Specifically, the Strategic Partners must agree to serve as a local resource for Native American-owned businesses seeking to obtain NABDC services. The Strategic Partner must at a minimum:

Provide effective guidance to Native American entrepreneurs in accessing MBDA's computer-based business assistance tools which are available on-site at the Strategic Partner's location;

Examples of other kinds of activities that might be required of the Strategic Partner include, but are not limited to:

Designate appropriate office space within their facilities for providing NABDC services; Establish a library of training materials, how-to guides, business publications and other information, both in print and electronic format, to be made available to Native American entrepreneurs on a walk-in basis;

Provide high-quality business counseling to Native American business enterprises if the Strategic Partner is one that offers direct client counseling;

Provide intake services for the NABDC with respect to Native American firms who approach the Strategic Partner for assistance but require counseling by the NABDC;

Provide Native American firms with high-quality referrals to outside resources where the firm has a need for specialized assistance which is outside the scope of the NABDC Program;

Support the NABDC project in coordinating MED Week activities within the geographic service area;

In selecting Strategic Partners, award recipient should consider establishing a diverse group that appropriately reflects the needs of the Native American business community within the service area. The skills, abilities and areas of concentration on the part of the Strategic Partners should be complementary, and collectively the skills and abilities of the Strategic Partners should complement those of the NABDC project operator.

In exchange for its compliance with the foregoing terms, and such other terms as the parties may seek to establish, the Strategic Partner will be eligible to serve as a host for the MBDA suite of business development tools described in the Enhancing the NABDCs Through Technology subsection of this Notice. The Strategic Partner will also be authorized to make public its relationship with MBDA through the NABDC project, and to refer to the partnership in brochures, advertisements, press releases and other media. Through the MOU relationship, the Strategic Partner will also be entitled to receive direct access to MBDA's information base of case studies, best practices, market research, and statistical data.

Computer Requirements

MBDA requires that all award recipients meet certain requirements related to the acquisition, installation, configuration, maintenance and security of information technology (IT) assets in order to ensure seamless and productive interface between and among all grant recipients, Native American-owned businesses, the MBDA Federal IT system and the public. These required assets and their configuration are hereinafter referred to as the ''enterprise.'' The basic components of the enterprise are the desktop workstations, local area network (LAN) components and a connection to the Internet.

At a minimum, the grantee shall provide one (1) desktop computer for the exclusive use of each employee delivering Native American business assistance to the public under an award from MBDA. All desktop computers shall be connected in a Local Area Network (LAN), enabling communication with all workstations on the network. Adequate provision shall also be made for Internet connectivity from each workstation during business hours. The recipient shall ensure that each of his/her employees, to include management, administrative personnel, contractors, full-time, part-time, and non-paid (volunteer) staff have a unique electronic mail (e-mail) address available to the public. The award recipient shall design, develop and maintain a presence on the World Wide Web, and shall maintain appropriate computer and network security precautions during all periods of funding by MBDA. Web servers, mail servers and/or servers maintained by a third party such as an Internet Service Provider (ISP) shall meet the minimum server specifications as stated herein. All IT requirements, as described herein, shall be met within 30 calendar days after the award.

1. *Network Design:* At all locations where services are delivered to the eligible public as defined by Executive Order 11625, the recipient shall operate a ''Client-Server'' configured local area network (LAN), providing each staff person delivering services to the eligible public exclusive access to a computer workstation during all business hours. MBDA may, from time to time, designate certain configurations of the enterprise hardware and software to meet interface requirements. The local area network shall include adequate provision for the retention of necessary data in the event of a failure (centralized data storage and regular backups). The network shall be protected in accordance with security best practices, to include the installation and maintenance of a regularly updated antivirus product.

2. *Desktop Workstations:* All desktop systems shall be not more than two (2) calendar years old at time of award and shall contain a processor (CPU) operating at speeds not less than 800 Megahertz (Mhz). Each desktop system shall contain a hard drive with a storage capacity of at least 10 GB. All desktop systems shall have installed software fully compatible with MS Office 97 Professional Edition or higher, and either Microsoft Internet Explorer 5.x or higher or Netscape 6.x or higher. At least 50% of all employee workstations shall be fully operational with a qualified staff person positioned at the keyboard during all business hours to include lunch and break periods.

3. *Maintenance and Security:* Documentation reflecting adherence to the computer and networking requirements set forth herein shall be maintained by the recipient for review by MBDA at any time. Each recipient shall designate and train one administrative person competent in the operation of a relevant PC operating system and local area network (LAN) technology as described herein. While emphasis is placed on the provision of services via the MBDA web portal, from time to time MBDA may require certain software be loaded on servers and desktops. In any given year, the cost of this additional software should not exceed $200.00 per workstation and $500.00 per server.

Every employee of the Center shall be assigned a unique username and password to access the system. Every employee shall be required to sign a written computer security agreement. (A suggested format for the computer security agreement will be provided at the time of award.) Every manager, employee, and contractor and any other person given access to the computer system shall sign the security agreement and an original copy of the signed agreement shall be kept in the Center's files. A photocopy of the agreement shall be sent by fax to MBDA at: (202) 482–2696 no later than 30 days after the award. All subsequent new hires and associations requiring access to Center or MBDA systems shall read, understand and sign the security agreement prior to issuance of a password. No employee shall have access to the MBDA system without a signed security agreement on file at MBDA.

4. *Web site:* Each recipient shall create and maintain a public web site using a unique address (*e.g., www.center-*

name.com). The first page (Index page) of the web site shall clearly identify the recipient as a Native American Business Development Center funded by the U.S. Department of Commerce's Minority Business Development Agency. The Index page of the web site shall load on software fully compatible with Microsoft Internet Explorer (5.x or higher) or Netscape 6.x or higher browser software using a 56Kb/s Internet connection in less than ten (10) seconds. The web site shall contain the names of all managers and employees, the business and mailing address of the Center, business phone and fax numbers and email addresses of the Center and employees, a statement referencing the services available at the Center, the hours under which the Center operates and a link to the MBDA web portal *(http://www.mbda.gov).* For the purpose of electronically directing clients to the appropriate Center staff, the web site shall also contain a short biographical statement for each employee of the Center including management, contractors, part-time, full time, and non-paid (volunteer) personnel, providing services directly to the eligible public under an award from MBDA. This biographical statement shall contain: the full name of the employee, and a brief description of the expertise of the employee to include academic degrees, certifications and any other pertinent information with respect to that employee's qualifications to deliver Native American business assistance services to eligible members of the public.

No third party advertising of commercial goods and services shall be permitted on the site. All links from the site to other than Federal, state or local government agencies and non-profit educational institutions must be requested for approval, in advance and in writing, through the Chief Information Officer, MBDA Office of Information Technology Services, to the Grants Office for written approval. Such approval shall not be unreasonably withheld but approval is subject to withdrawal if MBDA determines the linked site unsuitable. No employee of the Center, nor any other person, shall use the Center web site for any purpose other than that approved under the terms of the agreement between the recipient and MBDA. Every page of the web site shall be reviewed by the recipient for accuracy, currency, and appropriateness every three (3) months. Appropriate privacy notices and compliance with accessibility requirements will be prominently featured. From time to time, MBDA shall audit the recipient's web site and recommend changes in accordance with the guidelines set forth herein.

5. *Time for Compliance:* Within 30 days after the award, the recipient shall report via email to the Chief Information Officer, MBDA Office of Information Technology Services and the Grants Officer that he/she has complied with all technical requirements as specified herein. Within 30 days after the award, the recipient shall report the name, contact telephone numbers and email addresses of the Project Director, Network or System Administrator. As appropriate, the recipient shall also provide the telephone number and email address for the Technical Contact at the Internet Service Provider (ISP) providing Internet hosting and/or access for the grantee, and any other technical information as specified in the Technology Requirements.

6. *Performance System:* All required performance reporting to MBDA shall be conducted via the Internet using the Performance system to be found at the MBDA web portal *(http://www.mbda.gov).* Within 30 days after the award, each business development specialist (BDS) and/or anyone providing business assistance to the public under the award shall have satisfactorily completed the Performance System Training Course (PSTC). This course is available on-line from the MBDA web portal *(http://www.mbda.gov).* Only those persons giving direct assistance to the eligible public shall be given passwords and access to enter Performance data into the system. Only trained staff shall enter data into the Performance system. Performance data shall be entered by the person providing service to the client, not by administrative personnel. There shall be no ''sharing'' of passwords on the Performance system. Although not required, MBDA encourages input of information on a daily basis.

7. *Data Integrity:* The recipient shall take the necessary steps to ensure that all data entered into MBDA systems, and systems operated by the recipient in support of the award, or by any employee of the recipient, is accurate and timely.

Performance Measures

In accordance with 15 CFR Parts 14 and 24, applicants selected will be responsible for the effective management of all functions and activities supported by the financial assistance award. Recipients will be required to use program performance measures in a performance report due thirty (30) days after the end of the second quarter and to provide an end-of-year assessment of the accomplishments of the project using these measures. The end-of-year or final performance report is due 90 days after the end of the budget year. Once the project is awarded, the evaluation criteria, along with the assigned weight value, to be used for measuring the project performance on an ongoing basis are:

The number of completed work products (20);
The dollar value of transactions (40);
The number of Strategic Partners (20);
Operational Quality (20)
Number of new clients (5);
Number of Client Service Hours (5);
Client Satisfaction (5);
Management Score (5)

The minimum performance goals required for the above listed performance measures for the solicited geographic service area is outlined under the Funding Availability sub-heading for the geographic service area. The minimum performance goals are listed on an annual basis and will be broken out into quarterly increments by recipients, within 30 days after the award, for actual evaluation purposes.

Definitions

Completed Work Product—Completed work product consists of work assignments which the project performs under a professional engagement of an eligible client firm. For a task to constitute completed work product it is necessary that the task: Be one requiring the business expertise of the project staff; be agreed to by the client; be fully completed and delivered to the client; and be performed in a high quality and professional manner.

Dollar Value of Transactions—The dollar value of completed financial transactions represents the total principal value of executed contracts, approved loans, equity financing, acquisitions, mergers, or other binding financial agreements secured by clients of the project, with the assistance of project staff. For purposes of this performance element, eligible financial transactions are those which have a specific dollar value, and which increase the revenues of the client firm, expand its capital base, or produce some other direct commercial benefit for client firms. In order to be deemed complete, a financial transaction must be documented by an executed and binding agreement between the client firm and a party capable of performing its obligations under the terms of the agreement.

MBDA recognizes that the financial obligations evidenced by these transactions may be long-term, and

require performance over an extended period. Consequently it is not necessary that the funds or other financial value specified under the agreements have actually changed hands for the project to receive credit under this performance element, so long as the agreement of the parties is documented and binding.

Operational Quality—Operational quality refers to the quality and effectiveness of the project operator's delivery of client services, as evidenced by the following performance elements relating to the day-to-day management of the project: Number of new clients; number of client service hours; client satisfaction; and management assessment.

Client satisfaction will be determined through a consultation process with clients of the individual NABDC. The consultation will be used to rate the level of quality for client satisfaction.

The management assessment reflects MBDA's own evaluation of the overall management of the project, based on the Agency's internal review of the project's operations. The management assessment reflects such areas as the development of written engagement letters and work plans, proper staffing, adherence to scheduled work hours, recordkeeping, and any other areas which MBDA may deem to be relevant to determining the overall quality of the project's operations.

Strategic Partners—Strategic partners are those organizations with whom the recipient enters into specific agreements for mutual support. Strategic partners may be either public or private sector institutions, must have a clear mission, and must have a permanent organizational structure. Individuals or organizations that have a loosely defined structure or that operate on an ad hoc basis will not be considered as strategic partners for purposes of this performance element. MBDA will have no relationship with or responsibility to strategic partners.

In order to get credit for obtaining a strategic partner, a project operator must prepare a written agreement identifying: The responsibilities and duties which the project and the strategic partner each agree to undertake; the resources which each party agrees to commit to the partnership; the goals which the project and the strategic partner each seek to achieve by entering into the partnership; and the point of contact within the strategic partner organization for issues involving the partnership.

That strategic partners will not be allowed to charge and collect fees for services related to the project.

Performance Standards

The year-to-date performance of an NABDC will be based on the following rating system:

Minimum required percent of goals needed for each rating category	Minimum required points needed for each rating category	Rating categories
100% and above *	Above 100 **	Excellent.
At least 90%	90–100	Commendable.
At least 80%	80–90	Good.
At least 75%	75–79	Satisfactory.
At least 70%	70–74	Marginal.
Below 70%	Below 70.0	Unsatisfactory.

* Not to exceed 110%.
** Not to exceed 110 points.

Performance Incentives

MBDA recognizes and rewards those NABDCs that have maintained high performance throughout their award (three funding periods). NABDCs can earn additional 2 bonus funding periods without competition based upon their overall actual year-to-date performance for the duration of the award. The NABDC Performance Standards outlined above allow each NABDC with an overall ''excellent'' rating for its performance during the initial competitive funding period to qualify for up to 2 additional funding periods without further competition. A year-to-date excellent rating for the first two funding periods and part of the third funding period of an award will result in ''bonus funding periods'' as follows:

Performance of at least 25% above the minimum goal in each performance element for at least 28 months will allow an NABDC to receive one bonus funding period. Therefore, the award can total up to four funding periods prior to a required competition.

Performance of at least 25% above the minimum goal in each performance element for at least 6 months of the first bonus funding period will allow an NABDC to receive a second bonus funding period. Therefore, the award can total up to five funding periods prior to a required competition.

No award may be longer than five funding periods without competition no matter what an NABDC's performance happens to be.

Funding Availability: MBDA anticipates that a total of approximately $188 thousand will be available in FY 2003 for Federal assistance for the New Mexico NABDC, based upon Native American population, the size of the market and its need for MBDA resources. MBDA issues this notice subject to appropriations made available under the current continuing resolution (CR), H.J. Res. 111, ''Making continuing appropriations for the fiscal year 2003, and for other purposes,'' Public Law 107–229, as amended by H.J. Res. 112, Public Law 107–235, H.J. Res. 122, Public Law 107–240, and H.J. Res. 123, Public Law 107–224. MBDA anticipates making this award provided that funding for the NABDC Program is continued beyond November 22, 2002, the expiration of the current continuing resolution. Issuance of this award, however, is subject to the future availability of fiscal year 2003 funds. In no event will MBDA or the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is canceled because of other agency priorities.

Geographic Service Areas: An operator must provide services to eligible clients within its specified geographic service area. MBDA has defined the service area for the award below. To determine its geographic service areas, MBDA uses states, counties, Metropolitan Areas (MA), which comprise metropolitan statistical areas (MSA), consolidated metropolitan statistical areas (CMSA) and primary metropolitan statistical areas (PMSA) as defined by the OMB Committee on MAs (See: attachment to OMB Bulletin 99–04, Revised Statistical Definitions of Metropolitan Areas (MAs) and Guidance on Uses of MA Definitions found at *http://www.whitehouse.gov/OMB/bulletins/index.html*) and other demographic boundaries as specified herein. Services to eligible clients outside of an operator's specified service area may be requested, on a

case-by-case basis, through the appropriate MBDA Regional Director and granted by the Grants Officer.

Application: New Mexico Statewide

Geographic Service Area: State of New Mexico.

Award Number: 06–10–03001–01.

The recipient is required to maintain its NABDC in Albuquerque, New Mexico. Contingent upon the availability of Federal funds, the cost of performance for each of the three 12-month funding periods from January 1, 2003 to December 31, 2005, is estimated at $188,000. The total Federal amount is $564,000. The minimum cost share of 15% is not required.

The minimum goals for the NABDC are:

Completed Work Products: 124.

Dollar Value of Transactions: $13,976,471.

Number of New Clients: 146.

Number of Client Service Hours: 2,475.

Matching Requirements: It is not required that an applicant for an award to operate an NABDC propose a cost-share contribution. Cost sharing is the portion of the project cost not borne by the Federal Government. However, an applicant may propose a cost-share contribution in any of the following four means or a combination thereof: (1) Cash contributions, (2) non-cash applicant contributions, (3) third party in-kind contributions, and (4) client fees for services rendered.

If the NABDC chooses to contribute a cost-share amount by charging fees, there are policy restrictions with which it must comply:

First, client fees charged for one-on-one assistance must be based on a rate of $100 per hour. Second, the NABDC must set fee rates based on the following chart:

Gross receipts of client	Base rate for services rendered	Percent of cost borne by client	Client fee per hour
$0–99,999	$100.00	10	$10.00
$100,000–299,999	100.00	20	20.00
$300,000–999,999	100.00	30	30.00
$1 Million–2,999,999	100.00	40	40.00
$3 Million–4,999,999	100.00	50	50.00
$5 Million and Above	100.00	60	60.00

Third, the NABDC must contribute cash for uncollected fees that were included as part of the cost sharing contribution committed for this award. Fourth, client fees applied directly to the award's cost sharing requirement must be used in furtherance of the program objectives. Fifth, if the NABDC elects to charge fees, they must be charged to all eligible clients, regardless of minority group identification.

Eligibility Criteria: For-profit and non-profit organizations (including sole-proprietorships), state and local government entities, American Indian Tribes, and educational institutions are eligible to operate NABDCs.

Award Period: The total award period is three (3) years. Applicants must submit project plans and budgets for three years. The annual awards must have Scopes of Work that are clearly severable and can be easily separated into annual increments of meaningful work that will produce measurable programmatic objectives. Maintaining the severability of each annual funding request is necessary to ensure the orderly management and closure of a project in the event funding is not available for the second or third year continuation of the project. Projects will be funded for no more than one year at a time. Funding for subsequent years will be at the sole discretion of the Department of Commerce (DoC) and will depend on satisfactory performance by the recipient and the availability of funds to support the continuation of the project. Project proposals accepted for funding will not compete for funding in subsequent funding periods within the approved award period. Publication of this notice does not obligate MBDA or DoC to award any specific cooperative agreement or to obligate all or any part of available funds.

Funding Instrument: Financial assistance awards will be in the form of a cooperative agreement. MBDA's substantial involvement with recipients will include performing the following duties to further the NABDC's objectives:

a. *Post-Award Conference*—MBDA shall conduct a post-award conference for the NABDC award recipient to insure that each NABDC has a clear understanding of the program and its components. The conference will: (1) Provide an MBDA Directory for NABDCs and orient NABDC program officers; (2) Explain program reporting requirements and procedures; (3) Identify available resources that can enhance the capabilities of the NABDC; and (4) Provide detailed information about MBDA's business and other information systems.

b. *Networking, Promotion and Information Exchange*—MBDA shall provide the following: (1) Access to business information systems, which support the work of the NABDC, as described in the Enhancing the NABDCs Through Technology section. This information will be provided by MBDA's Office of Information Technology. The specific information systems and access to them will be provided at the time of the award; (2) Sponsor one national and at least one regional conference; (3) Expand the Phoenix data bank of Native American-owned firms by requiring other MBDA-funded programs to provide additional entries; (4) Promote the exchange of business opportunity information within the MBDA funded system using the Phoenix and Opportunity databases located at *http://www.mbda.gov*; (5) Work closely with the NABDC to establish a system in which procurement and contract opportunities can be shared with the network of NABDCs. This system will include opportunities identified throughout the MBDA network using the Phoenix and Opportunity databases located at *http://www.mbda.gov*; (6) Help promote special events to be scheduled at the local community, state and national levels in celebration of MED Week, which occurs annually; and (7) Identify Federal, state and local governments, and private sector market opportunities to the NABDCs using the Phoenix and Opportunity databases located at *http://www.mbda.gov.*

Project Monitoring—MBDA will systematically monitor the performance of the NABDC. This monitoring includes regular review of data input to the performance database system, assessment of the end of the second quarter progress report, and an on-site review, when deemed necessary and appropriate by the regional office, of the center's client files to verify NABDC performance, reported assistance and

interviews with clients assisted. In consultation with clients of the individual NABDC, MBDA will assess the Center's effectiveness in providing business development services to their respective Native American business communities. MBDA will then provide a report of findings and recommendations for improvement as a result of evaluations and monitoring visits. MBDA will approve qualifications of key NABDC staff and respond in a timely manner to correspondence requesting MBDA action.

Application Forms and Package: Standard Forms 424, Application for Federal Assistance; 424A, Budget Information-Non-Construction Programs; and 424B, Assurances-Non-Construction Programs, SF–LLL (Rev. 7–97); Department of Commerce forms, CD–346, Applicant for Funding Assistance, CD–511, Certifications Regarding Debarment, Suspension and Other Responsibility matters: Drug-Free Workplace Requirements and Lobbying shall be used in applying for financial assistance. These forms may be obtained by (1) contacting MBDA as described in the **CONTACT** section above; (2) by downloading Standard forms at *http://www.whitehouse.gov/OMB/grants/index.html*; (3) and Department of Commerce forms may be downloaded at *http://www.doc.gov/forms.* or (4) by applying on-line via the World Wide Web at MBDA's Web site located at *http://www.mbda.gov/egrants.*

Project Funding Priorities: MBDA is especially interested in receiving innovative proposals that focus on the following: (1) Identifying and working to eliminate barriers which limit the access of Native American businesses to markets and capital; (2) identifying and working to meet the special needs of Native American businesses seeking to obtain large-scale contracts (in excess of $500,000) with institutional customers; and (3) promoting the understanding and use of Electronic Commerce by the Native American business community.

Proposal Format Requirements: The structure of the proposal should contain the following headings, in the following order:

Table of Contents

Program Narrative
- Applicant Capability
- Resources
- Techniques and Methodologies
- Costs

Forms
- Pages of the proposal should be numbered consecutively.

Evaluation Criteria: Proposals will be evaluated and applicants will be selected based on the following criteria.

Applicant Capability (45 points)

The applicant's proposal will be evaluated with respect to the applicant firm's experience and expertise in providing the work requirements listed. Specifically, the proposals will be evaluated as follows:

Level of experience in and knowledge of the Native American business sector and strategies for enhancing its growth and profitability (10 points);

Extent of resources and professional relationships within the corporate, banking and investment community that may be beneficial to Native American-owned firms (10 points);

Level of experience and expertise in advocating on behalf of Native American businesses, both as to specific transactions in which a Native American business seeks to engage, and as to broad market advocacy for the benefit of the Native American community at large (10 points); and

Assessment of the qualifications, experience and proposed role of staff who will operate the project, including possessing the expertise in utilizing information systems as contemplated under the Computer Requirements section of this Notice. (15 points).

Qualifications of the project director of the NABDC are of particular importance and must be included as part of the application, along with a copy of his/her college transcript and a letter committing to one (1) year's service. Position descriptions and qualification standards for all staff should be included as part of the application. Applicants must provide a copy of their Articles of Incorporation, by-laws and IRS 501(c)(3) non-profit letter or other evidence of non-profit status.

Resources (25 points)

The applicant's proposal will be evaluated according to the following sub-criteria:

Adequacy of the plan to recruit, establish and maintain the network of 3 Strategic Partners (10 points).

Adequacy of your plan to accomplish the computer hardware and software requirements (5 points).

Likelihood of obtaining resources (not included as part of the cost-sharing arrangement) that will be used. Include commitment letters from those resources listed and indicate their willingness to work with the applicant. These resources can include such items as computer facilities, voluntary staff time and space, and financial resources. Three to five letters of support (with telephone numbers) from business or community organizations should be included from those resources willing to work with the applicant (10 points).

Techniques and Methodologies (20 points)

The applicant's proposal will be evaluated with respect to the proposed action plans and operation techniques. Specifically, the proposals will be evaluated as follows:

The applicant's specific plan-of-action detailing *how* each work requirement, except for Strategic Partners which is addressed under Resources, will be met and *how* the techniques to be used will be implemented. The applicant will be evaluated on the effectiveness and efficiency of use of all staff time to achieve the work requirements (10 points).

Fulfillment of performance measures will be evaluated by relating each one to the financial, information and market resources available in the geographic service area to the applicant and how the goals will be met (10 points).

Proposed Budget (10 points)

The applicant's proposal will be evaluated on the following sub-criteria:

Reasonableness, allowability and allocability of costs (10 points).

Bonus Points: Proposed cost sharing, although not a requirement for NABDC application, will be awarded bonus points on the following scale: more than 0–5%—1 point; 6–10%—2 points; 11–15%—3 points; 16–20%—4 points; and over 20%—5 points.

An application must receive an average of at least 70% of the total points available for all four evaluation criterion, in order for the application to be considered for funding.

Management Fee

For-profit as well as not-for-profit organizations may negotiate their management fees, but they shall not exceed 7% of *total* estimated direct costs (Federal plus non-Federal) for the proposed award.

Program Income

Many of MBDA's business development services programs allow their awardees to charge a fee for services rendered to clients. Where applicable, fees are considered program income and shall be accounted for and may be used to finance the non-Federal cost-share of the project. Any excess fee income shall be used to further the program purpose in accordance with the terms and conditions of the award.

Selection Procedures

Prior to the formal paneling process, each application will receive an initial screening to ensure that all required forms, signatures and documentation are present. Each application will receive an independent, objective review by a panel qualified to evaluate the applications submitted. The independent review panel, consisting of at least three federal and/or non-federal individuals, reviews all applications based on the above criteria. Each member of the independent review panel will individually evaluate and rank the proposals and submit their rankings and recommendation to the National Director. The National Director of MBDA makes the final recommendation to the Department of Commerce Grants Officer regarding the funding of applications, taking into account the following selection criteria:

The evaluations and rankings of the independent review panel;

The degree to which applications address MBDA priorities as established under the project funding priorities;

Site Visits. The National Director or his/her designee reserves the right to conduct a site visit to applicant organizations receiving an average of at least 70% of the total points available for all four evaluation criteria. Site visits will be used to confirm the applicant's ability to best fulfill MBDA's funding priorities, particularly identifying and working to meet the needs of minority businesses seeking to obtain large scale contracts with institutional customers.

The availability of funding.

Unsuccessful Competition

On occasion, competitive solicitations or competitive panels may produce less than optimum results, such as competition resulting in the receipt of no applications or competition resulting in all unresponsive applications received. If the competition results in the receipt of only one application, it may or may not require additional action from MBDA depending upon the competitive history of the area, the quality of the application received, and the time and cost limits involved. In the event that any or all of these conditions arise, MBDA shall take the most time and cost-effective approach available that is in the best interest of the Government. The approaches available are: (1) Re-competition or (2) Re-Paneling or (3) Negotiation.

Disposition of Unsuccessful Applications

Upon the execution of an award by the Department of Commerce, MBDA will notify the unsuccessful applicants, in writing, indicating the winner of the award and indicating a 30-day timeframe in which to request return of the unsuccessful application. Once this 30-day notice has lapsed, MBDA will destroy all unsuccessful applications.

Intergovernmental Review

Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** Notice of October 1, 2001 (66 FR 49917), are applicable to this solicitation.

Executive Order 12866

This notice was determined to be not significant for purposes of E.O. 12866.

Regulatory Flexibility Act

Because notice and comment are not required under 5 U.S.C. 553(a)(2), or any other law, for notices relating to public property, loans, grants, benefits or contracts, a Regulatory Flexibility Analysis, 5 U.S.C. 601 *et seq.*, is not required and has not been prepared for this notice.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). 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, and 0348–0046, and 0605–0001.

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.

Dated: October 24, 2002.

Edith Jett McCloud,

Associate Director for Management, Minority Business Development Agency.

[FR Doc. 02–27573 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advanced Technology Program Advisory Committee

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Postponement of partially closed meeting.

SUMMARY: The previously scheduled Advanced Technology Program (ATP) Advisory Committee meeting is postponed.

DATES: The meeting previously scheduled for October 29, 2002, from 8:45 a.m. to 3:45 p.m. is postponed. The open portion of the meeting was to occur from 9:50 a.m. to 2:30 p.m.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Peters, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–1004, telephone number (301) 975–5607 or by e-mail at *carolyn.peters@nist.gov.*

SUPPLEMENTARY INFORMATION: On October 15, 2002, NIST announced in the **Federal Register** (67 FR 63622) a partially closed meeting of the ATP Advisory Committee. The meeting was scheduled for October 29, 2002, from 8:45 a.m. to 3:45 p.m. at NIST, Lecture Room B, Administration Building, Gaithersburg, Maryland 20899.

The meeting is being postponed due to budget restraints during the Continuing Resolution and will be rescheduled at a later date.

The purpose of the meeting was to review and make recommendations regarding general policy for the ATP, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda included an ATP update, a panel discussion from the international community on technology programs, an update on the ATP competition and a presentation on emerging knowledge about ATP's impact on firm behavior, collaboration, etc.

Dated: October 23, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–27633 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102402C]

Proposed Information Collection; Comment Request; Coastal and Estuarine Land Conservation, Planning, Protection, or Restoration

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, 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, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before December 30, 2002.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Elaine Vaudreuil, N/ORM Room 10541, 1305 East-West Highway, Silver Spring MD 20910-3281 (301–713–3155, ext. 103).

SUPPLEMENTARY INFORMATION:

I. Abstract

The FY 2002 Commerce, Justice, State Appropriations Act directed the Secretary of Commerce to establish a Coastal and Estuarine Land Conservation Program (CELCP) to protect important areas that have significant conservation, recreation, ecological, historical, or aesthetic values, or that are threatened by conversion, and to issue guidelines for this program delineating the criteria for grant awards. The guidelines establish procedures for eligible applicants who choose to participate in the program to use when developing state conservation plans, proposing or soliciting projects under this program, applying for funds, and carrying out projects under this program in a manner that is consistent with the purposes of the program. NOAA also has, or is given, authority under the Coastal Zone Management Act, annual appropriations or other authorities, to issue funds to coastal states and localities for planning, conservation, acquisition, protection, restoration, or construction projects. This information collection enables NOAA to implement the CELCP, under its current or future authorization, and facilitate the review of similar projects under different, but related authorities.

II. Method of Collection

The Project Application Checklist is a form. The other information is submitted in accordance with guidance. The information can be submitted in electronic or paper format.

III. Data

OMB Number: 0648–0459.

Form Number: None.

Type of Review: Regular submission.

Affected Public: State, Local, or Tribal Government; not-for-profit institutions.

Estimated Number of Respondents: 50.

Estimated Time Per Response: 30 hours for a CELCP plan; and 10 hours for a project application and checklist.

Estimated Total Annual Burden Hours: 1,520.

Estimated Total Annual Cost to Public: $505.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 9, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–27561 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–08–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102402E]

Proposed Information Collection; Comment Request; Alaska Individual Fishing Quota Cost Recovery Program Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, 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, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before December 30, 2002.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, NMFS Alaska Region, 907–586–7228 or e-mail at *patsy.bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Magnuson-Stevens Fishery Conservation and Management Act requires that the Secretary of Commerce implement a Cost Recovery Program to cover the management and enforcement costs of the Alaska Individual Fishing Quota (IFQ) Program. This Cost Recovery Program requires IFQ permit holders and registered buyers to submit information about the value of landings of IFQ species and for the permit holders to calculate and submit fees.

II. Method of Collection

Forms are used except for appeals, which involve the submission of evidence/documentation.

III. Data

OMB Number: 0648–0398.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations, individuals or

households, and not-for-profit institutions.

Estimated Number of Respondents: 4,100.

Estimated Time Per Response: 2 hours for a fee submission form; 2 hours for a Register Buyer Ex-vessel Value and Volume Report; 2 hours for an appeal; and 30 minutes for a prepayment of fees.

Estimated Total Annual Burden Hours: 8,400.

Estimated Total Annual Cost to Public: $17,116.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 9, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–27563 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102102D]

Endangered and Threatened Species; Issuance of Permit 1094

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

ACTION: Issuance of amendment to enhancement permit 1094.

SUMMARY: NMFS has amended research and enhancement permit 1094 held by the State of Washington Department of Fish and Wildlife (WDFW), pursuant to the Endangered Species Act of 1973 (ESA).

ADDRESSES: Requests for copies of the decision documents or any of the other associated documents should be directed to the Hatcheries and Inland Fisheries Branch, Sustainable Fisheries Division, NOAA Fisheries, 525 NE Oregon Street, Suite 510, Portland, OR, 97232.

FOR FURTHER INFORMATION CONTACT: Kristine Petersen, Portland, OR at phone number: (503) 230–5409, e-mail: *Kristine.Petersen@noaa.gov*

SUPPLEMENTARY INFORMATION: The following species and evolutionarily significant units (ESUs) are covered in the permit:

Steelhead (*Oncorhynchus mykiss*): endangered Upper Columbia River.

Chinook salmon (*O. tshawytscha*): endangered Upper Columbia River spring run.

Decision

Notice of proposed actions similar in scope to the proposed amendment actions was published on August 1, 2002 (67 FR 49906). A public meeting was held in Wenatchee, WA on August 27, 2002. The amended permit authorizes WDFW to manage adult hatchery steelhead returns that are surplus to recovery and broodstock needs. Permit 1094 authorizes WDFW's activities related to carrying out the steelhead artificial propagation enhancement program in the Upper Columbia River. After evaluating the potential effects of this amendment on listed salmon and steelhead in the Upper Columbia River ESUs and the environmental consequences, NOAA Fisheries issued an amended permit with conditions authorizing takes of the ESA-listed anadromous fish species. NOAA Fisheries' conditions will ensure that the takes of ESA-listed anadromous fish will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. The permit expires May 31, 2003.

Rationale for Decision

Favorable environmental conditions leading to a return of hatchery steelhead surplus to the number needed on spawning grounds precipitate the need to provide additional scope to available techniques for managing these experimental enhancement program fish, responsive to conservation needs of natural spawning populations in the Upper Columbia River basin. This amendment provides additional mitigation measures to avoid, minimize, and/or compensate for the anticipated takes of ESA-listed anadromous fish.

The amended permit was granted only after NOAA Fisheries determined that all permit issuance criteria were met, including the requirement that granting the permit would not jeopardize the continued existence of the species, and that the permit is consistent with the purposes and policies set forth in the Endangered Species Act of 1973, as amended.

Dated: October 24, 2002.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–27564 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 093002B]

Marine Mammals; File No. 42–1642

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Mystic Aquarium, 55 Coogan Blvd., Mystic, CT 06355 (Dr. Lisa Mazarro, Principal Investigator) has been issued a permit amendment to take Steller sea lions for purposes of scientific research and enhancement.

ADDRESSES: The permit amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NOAA Fisheries, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Northeast Region, NOAA Fisheries, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Tammy Adams, (301)713–2289.

SUPPLEMENTARY INFORMATION: On July 11, 2002, notice was published in the **Federal Register** (67 FR 45958) that a request for an amendment to scientific research Permit No. 42–1642–01 to take Steller sea lions had been submitted by the above-named organization. The requested permit amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR

part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Issuance of this permit amendment, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

The permit amendment authorizes the permit holder to import one male Steller sea lion from the Vancouver Aquarium, Vancouver, Canada, for breeding with female Steller sea lions currently held by Mystic Aquarium in support of their study of changes in vitamin A and E status in relation to various life history stages in captive Steller sea lions.

Dated: October 24, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, NOAA Fisheries.

[FR Doc. 02–27565 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102102B]

Endangered Species; File Nos. 1266, 1380, 1388

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

ACTION: Issuance of modification, Issuance of permits.

SUMMARY: Notice is hereby given that the following applicant has been issued a permit modification to take sea turtles for purposes of scientific research/enhancement:

REMSA, Inc., 12829 Jefferson Ave., Suite 108, Newport News, VA 23608 (John Glass, Principal Investigator).

Notice is hereby given that the following applicants have been issued a permit to take sea turtles for purposes of scientific research/enhancement:

Coastwise Consulting, 173 Virginia Ave., Athens, GA 30601 (Christopher Slay, Principal Investigator) (File No. 1380); and

Dr. David Nelson, U.S. Army Research and Development Center, Waterways Experiment Station, 4104 Freetown Rd., Vicksburg, MS 39183 (File No. 1388).

ADDRESSES: The modification, permits, and related documents are available for review upon written request or by appointment in the following office(s):

All documents: Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On March 27, 2002, notice was published in the **Federal Register** (67 FR 14698) that a modification of Permit No. 1266, issued May 8, 2001 (66 FR 27940), had been requested by REMSA, Inc. The requested modification has been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit 1266 authorizes capturing via trawl, handling, flipper tagging and releasing sea turtles while removing them from the path of hopper dredges. Originally the Permit authorized the take of 30 loggerhead (*Caretta caretta*), 7 green (*Chelonia mydas*), 5 Kemp's ridley (Lepidochelys kempii), 4 hawksbill (*Eretmochelys imbricata*), and 4 leatherback (Dermochelys coriacea) sea turtles. This modification increases the annual take to 350 loggerhead, 150 green, 150 Kemp's ridley, 10 hawksbill and 10 leatherback sea turtles. The applicant will also begin passive integrated transponder (PIT) tagging the sea turtles in addition to the previously authorized activities. Research is conducted in the Atlantic Ocean and the Gulf of Mexico.

On April 24, 2002, notice was published in the **Federal Register** (67 FR 20094) that a request for a scientific research permit to take sea turtles had been submitted by Coastwise Consulting. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 1380 authorizes the capture of live sea turtles using shrimp trawlers in association with hopper dredge activities along the southeastern U.S. coast and the Gulf of Mexico. Trawling may be conducted prior to dredging to assess the abundance of sea turtles in an area and/or during dredging operations to relocate turtles away from the channel being dredged. Captured turtles will be identified, measured, photographed, tagged with both flipper and PIT tags, and genetically sampled before being released. The annual number of takes authorized are: 800 loggerhead, 235 Kemp's ridley, 155 green, 51 hawksbill, and 24 leatherback turtles.

On July 23, 2002, notice was published in the **Federal Register** (67 FR 48135) that a request for a scientific research permit to take sea turtles had been submitted by Dr. Nelson. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 1388 authorizes sea turtle research in the northwestern Atlantic Ocean and the Gulf of Mexico. The first project involves relocation trawling in association with hopper dredge activity. A total of 200 loggerhead, 100 green, 30 Kemp's ridley, 2 hawksbill, and 2 leatherback sea turtles are authorized to be captured, handled, measured, flipper and PIT tagged, and released. The second project uses a subset of the turtles caught via relocation trawling to investigate large-scale movements and diving behavior. Twenty loggerhead, 5 Kemp's ridley, and 5 green turtles will be satellite tagged in addition to the above activities before being released. The third project is an abundance and habitat survey of green sea turtles along the shoreline of Cape Canaveral. A total of 75 green sea turtles may be captured, handled, flipper and PIT tagged, and fitted with a radio/sonic transmitter or a time-depth recorder/radio transmitter, before being released.

Issuance of these permits and modification, as required by the ESA, was based on a finding that such modification/permits: (1) were applied for in good faith, (2) will not operate to the disadvantage of the endangered species which are the subject of these permits, and (3) are consistent with the purposes and policies set forth in Section 2 of the ESA.

Dated: October 25, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–27614 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102102C]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Issuance of 32 scientific research permit actions.

SUMMARY: Between July 31 and September 27, 2002, NOAA Fisheries' Northwest Region issued 32 permits, permit modifications, and permit amendments allowing endangered and threatened species of Pacific salmon and steelhead to be taken for scientific research purposes under section 10(a)1(A) the Endangered Species Act (ESA) of 1973, as amended. The research actions and the species they affect are listed in the SUPPLEMENTARY INFORMATION section below.

ADDRESSES: The permits, permit applications, and related documents are available for review by appointment at NOAA Fisheries' Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737 (phone: 503–230–5400, fax: 503–230–5435).

FOR FURTHER INFORMATION CONTACT: Steve Stone, Portland, OR (phone: 503–231–2317, fax: 503–230–5435, e-mail: *steve.stone@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Authority

The ESA requires that permits, permit modifications, and permit amendments be issued based on a finding that such actions: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species that are the subject of the actions; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits, modifications, and amendments are issued in accordance with, and are subject to, the ESA and NOAA Fisheries regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Species Covered in This Notice

The ESA-listed species/evolutionarily significant units (ESUs) covered by this notice are identified below and listed in the subsequent table by the numbers that precede each of them in the following text:

(1) Puget Sound chinook salmon (*Oncorhynchus tshawytscha*)

(2) Lower Columbia River chinook salmon

(3) Snake River spring/summer chinook salmon

(4) Snake River fall chinook salmon

(5) Upper Columbia River spring-run chinook salmon

(6) Upper Willamette River chinook salmon

(7) Hood Canal summer-run chum salmon (*O. keta*)

(8) Columbia River chum salmon

(9) Lower Columbia River steelhead (*O. mykiss*)

(10) Middle Columbia River steelhead

(11) Snake River steelhead

(12) Upper Willamette River steelhead

(13) Upper Columbia River steelhead

(14) Southern Oregon/Northern California Coasts coho salmon (*O. kisutch*)

(15) Oregon Coast coho salmon

(16) Snake River sockeye salmon (*O. nerka*)

(17) Ozette Lake sockeye salmon

TABLE 1.—THIRTY-TWO SCIENTIFIC RESEARCH PERMIT ACTIONS AFFECTING THREATENED AND ENDANGERED PACIFIC SALMON AND STEELHEAD

Permit Number	Affected Species/ESU	Permittee	Federal Register Notice of Application Receipt
1135	2, 9	U.S. Geological Survey (USGS)	April 4, 2002 (67 FR 17970)
1140	1, 15	Northwest Fisheries Science Center (NWFSC)	June 11, 2002 (67 FR 39960)
1141	5	Public Utility District No. 2 of Grant County	April 4, 2002 (67 FR 17970)
1156	14, 15	U.S. Environmental Protection Agency	June 11, 2002 (67 FR 39960)
1177	14	Portland District Corps of Engineers	April 4, 2002 (67 FR 17970)
1256	6, 15	Bureau of Land Management	May 16, 2002 (67 FR 34909)
1291	16	USGS	June 25, 2002 (67 FR 42757)
1309	1	King County Department of Natural Resources and Parks (KCDNRP).	June 11, 2002 (67 FR 39960)
1315	1	U.S. Corps of Engineers Seattle District	April 4, 2002 (67 FR 17970)
1317	10	USGS	April 4, 2002 (67 FR 17970) June 25, 2002 (67 FR 42757)
1318	2, 6, 9, 12, 15	Oregon Department of Fish and Wildlife (ODFW)	May 16, 2002 (67 FR 34909)
1322	3, 6, 5, 8	NWFSC	April 4, 2002 (67 FR 17970) June 25, 2002 (67 FR 42757)
1335	1, 7, 8, 9, 10	U.S. Forest Service	May 16, 2002 (67 FR 34909)
1336	2, 6, 9, 12, 15	Port Blakely Tree Farms	May 16, 2002 (67 FR 34909)
1345	1, 3, 5, 6, 10, 11, 13	Washington Department of Fish and Wildlife	May 16, 2002 (67 FR 34909)
1358	14	ODFW	February 22, 2002 (67 FR 8233)
1359	14	ODFW	February 22, 2002 (67 FR 8233)
1362	11	Idaho Cooperative Fish and Wildlife Research Unit	April 4, 2002 (67 FR 17970)

TABLE 1.—THIRTY-TWO SCIENTIFIC RESEARCH PERMIT ACTIONS AFFECTING THREATENED AND ENDANGERED PACIFIC SALMON AND STEELHEAD—Continued

Permit Number	Affected Species/ESU	Permittee	Federal Register Notice of Application Receipt
1363	3, 11	Fish Passage Center	April 4, 2002 (67 FR 17970)
1364	4,11	Idaho Fishery Resource Office of the U.S. Fish and Wildlife Service.	April 4, 2002 (67 FR 17970)
1365	10	Confederated Tribes of the Umatilla Indian Reservation	April 4, 2002 (67 FR 17970)
1366	2, 3, 4, 5, 6, 8, 9 10, 11, 12, 13, 16	Oregon Cooperative Fish and Wildlife Research Unit	April 4, 2002 (67 FR 17970)
1367	10	NWFSC	April 4, 2002 (67 FR 17970)
1369	1	KCDNRP	April 4, 2002 (67 FR 17970)
1370	3	Utah State University (USU)	April 4, 2002 (67 FR 17970) June 11, 2002 (67 FR 39960)
1371	1	Battelle Marine Sciences Center	April 4, 2002 (67 FR 17970)
1372	1	Puget Sound Energy	April 4, 2002 (67 FR 17970)
1376	1	Washington Cooperative Fish and Wildlife Research Unit	April 4, 2002 (67 FR 17970)
1381	1	City of Bellingham	June 11, 2002 (67 FR 39960)
1382	10	USU	June 11, 2002 (67 FR 39960)
1383	1	USGS	June 11, 2002 (67 FR 39960)
1386	1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 13, 17	Washington Department of Ecology	June 25, 2002 (67 FR 42757)

Dated: October 24, 2002.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–27615 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange (CME): Proposed Amendments to the Spot Month Speculative Position Limits for the Live Cattle Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of terms and conditions of proposed amendments to the CME's spot month speculative position limits for the live cattle futures contract.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has requested that the Commission approve proposed amendments to the spot month speculative position limits for the live cattle futures contract. The proposal was submitted pursuant to the provisions of section 5c(c)(2) of the Commodity Exchange Act (Act) and Commission Regulation 40.4(a). Under the proposal, the speculative position limit that applies during the period at the close of business on the first business day following the first Friday of the contract month through the business day preceding the last five business days would be reduced to 300 contracts from 600 contracts. The Exchange intends to implement the amendments with respect to positions held in the December 2002 through the October 2003 contract months.

The Director of the Division of Market Oversight (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the Exchange's proposed amendments for comment is in the public interest, and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before November 14, 2002.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to (202) 418–5521 or by electronic mail to *secretary@cftc.gov.* Reference should be made to the CME's proposed amendments to the spot month speculative position limits for the live cattle futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Martin G. Murray of the Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC (202) 418–5276. Facsimile number: (202) 418–5527. Electronic mail: *mmurray@cftc.gov*

SUPPLEMENTARY INFORMATION: The CME live cattle futures contract's speculative position limit rules currently specify an individual contract month limit of 3,300 contracts, a ''scale down'' spot month speculative position limit of 600 contracts that becomes effective at the close of business on the first business day following the first Friday of the contract month, and a 300-contract spot month limit that becomes effective at the close of business on the business day immediately preceding the last five business days of the expiring contract month.[1] The proposed amendments will eliminate the ''scale down'' limit of 600 contracts, and require that speculative positions be reduced immediately to 300 contracts as of the close of business on the first business day following the first Friday of the contract month.

In support of the proposal, the Exchange states that the proposed level

[1] The last trading day is the last business day of the contract month. Delivery notices may be issued beginning with the first business day following the first Friday of the contract month.

is ''more in balance with deliverable supplies'' for the live cattle futures contract. In particular, the Exchange states that deliverable supplies of live cattle meeting the futures contract's existing weight specifications have been adversely impacted by the ''significant increase in slaughter weights of cattle in the U.S.'' As a result, ''a growing proportion of the U.S. fed steer population is rapidly becoming ineligible for delivery against the Live Cattle contract.'' In this regard, the futures contract does not permit the delivery on a live-graded basis of individual steers weighing more than 1,350 pounds (or 1,375 pounds effective with the June 2003 contract month). However, the average carcass weight for steers has increased steadily in recent years, and in August 2002 was 837 pounds, for a live-weight equivalent of 1,329 pounds.

The Exchange has proposed to implement the subject proposed amendments only for existing contracts, beginning with the December 2002 contract month through the October 2003 contract month. The Exchange has separately notified the Commission that it will delay listing of the December 2003 contract month, pending its consideration of additional contract changes. In this regard, the Exchange notes that it is contemplating amendments that will increase the weight specifications for the live cattle futures contract to accommodate the higher observed weights in the cash market and will make additional amendments to the spot-month speculative position limits.

The Division is requesting comment on the proposal. Copies of the Exchange's proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Copies of the proposed amendments can also be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the CME in support of the request for approval may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations there under (17 CFR part 145 (2000)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments pertaining to the proposed amendments or with respect to other materials submitted by the CME should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre 1155 21st Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC on October 24, 2002.

Michael Gorham,

Director.

[FR Doc. 02–27605 Filed 10–29–02; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

Federal Register Citation of Previous Announcement: Vol. 67, No. 202, Friday, October 18, 2002, page 664354.

Previously Announced Time and Date of Meeting: 10:00 a.m., Thursday, October 24, 2002.

Changes in Meeting: The Commission briefing regarding Petition HP 99–1 requesting a ban of polyvinyl chloride (PVC) in all toys and other products intended for children five years of age and under was canceled.

For a recorded message containing the latest agenda information, call (301) 504–0709.

FOR FURTHER INFORMATION CONTACT: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: October 28, 2002.

Todd A. Stevenson,

Secretary.

[FR Doc. 02–27742 Filed 10–28–02; 2:36 pm]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

Federal Register Citation of Previous Announcement: Vol. 67, No. 207, Friday, October 25, 2002, page 65538.

Previously Announced Time and Date of Meeting: 10:00 a.m., Friday, November 1, 2002.

Changes in Meeting: The Commission decision meeting regarding Petition HP 99–1 requesting a ban of polyvinyl chloride (PVC) in all toys and other products intended for children five years of age and under is canceled. The briefing also on this subject scheduled for October 24, 2002 was also canceled.

For a recorded message containing the latest agenda information, call (301) 504–0709.

FOR FURTHER INFORMATION CONTACT: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: October 28, 2002.

Todd A. Stevenson,

Secretary.

[FR Doc. 02–27743 Filed 10–28–02; 2:36 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0069]

Federal Acquisition Regulation; Submission for OMB Review; Indirect Cost Rates

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0069).

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 indirect cost rates. A request for public comments was published at 67 FR 19558 in the **Federal Register** on April 22, 2002 and a correction to dates published at 67 FR 39473 on June 7, 2002. Comments were received. Differences in numbers from previous submissions are the result of revised estimates after considering comments received.

DATES: Submit comments on or before November 29, 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, Regulatory Secretariat (MVA), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0069,

Indirect Cost Rates, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

The contractor's proposal of final indirect cost rates is necessary for the establishment of rates used to reimburse the contractor for the costs of performing under the contract. The supporting cost data are the cost accounting information normally prepared by organizations under sound management and accounting practices.The proposal and supporting data is used by the contracting official and auditor to verify and analyze the indirect costs and to determine the final indirect cost rates or to prepare the Government negotiating position if negotiation of the rates is required under the contract terms.

B. Annual Reporting Burden

Respondents: 3,000.

Responses Per Respondent: 1.

Annual Responses: 3,000.

Hours Per Response: 2,188.

Total Burden Hours: 6,564,000.

Burden hours are based on an estimated 3000 business segments that have overhead rates established annually. The hours per response are based on the sum of estimated hours per response for reporting and estimated hours per response for recordkeeping. The estimated total burden hours increased substantially from 2,469 hours to 6,564,000 hours for all respondents because we changed the method of estimating, not because the burden has increased. Prior estimates were based on the time to generate a proposal document. The new estimate is based on the time necessary to keep records, analyze information and generate a proposal document.

Obtaining copies of proposals:

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVA), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0069, Indirect Cost Rates, in all correspondence.

Dated: October 24, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–27579 Filed 10–29–02; 8:45 am]

BILLING CODE 6820–EP–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 November 29, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, 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 *Lauren_Wittenberg@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: October 24, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision of a currently approved collection.

Title: Application for Grants Under the Strengthening Institutions Program, American Indian Tribally Controlled Colleges and Universities Program, and Alaska Native and Native Hawaiian-Serving Institutions Program.

Frequency: Biennially.

Affected Public: Not-for-profit institutions (primary), State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 300.

Burden Hours: 17150.

Abstract: The information is required of institutions of higher education that apply for grants under the Strengthening Institutions Program, the American Indian Tribally Controlled Colleges and Universities Program, and the Alaska Native and Native Hawaiian Serving Institutions Program, authorized under Title III, Part A of the Higher Education Act of 1965, as amended. This information will be used in the peer review and in making funding recommendations.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

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 2179. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to SCHUBART at (202) 708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Postsecondary Education

Type of Review: New Collection.

Title: Application for Grants Under the Developing Hispanic-Serving Institutions Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions (primary), State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 100.

Burden Hours: 850.

Abstract: This information is required of institutions of higher education designated eligible to apply for grants as Hispanic-Serving Institutions under Title V, Part A of the Higher Education Act of 1965, as amended. This information will be used in the evaluation process to determine whether proposed activities are consistent with legislated activities, and to determine the dollar share of the Congressional appropriation.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grants Information Collections (1890–0001). Therefore, this 30-day public comment notice will be the only public comment notice published for this information collection.

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 2178. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at (202) 708–9266. 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. 02–27539 Filed 10–29–02; 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 November 29, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, 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 *Lauren_Wittenberg@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: October 24, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision of a currently approved collection.

Title: Student Aid Report.

Frequency: Annually.

Affected Public: Individuals or household (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 20524631.

Burden Hours: 4871526.

Abstract: The Student Aid Report (SAR) is used to notify all applicants of their eligibility to receive Federal student aid for postsecondary education. The form is submitted by the applicant to the institution of their choice.

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 2097. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at (202) 708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Postsecondary Education

Type of Review: New Collection.

Title: FIPSE Comprehensive Programs Final Report Guidelines.

Frequency: Other: once, at project period end.

Affected Public: Not-for-profit institutions (primary), State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 75.

Burden Hours: 1500.

Abstract: The Comprehensive program is a discretionary grant award program of the Fund for the Improvement of Postsecondary Education (FIPSE). The program supports innovative reform projects that hold promise as models for the resolution of important issues and problems in postsecondary education. Grants made under this program are expected to contribute new information in educational practice that can be shared with others. The Comprehensive Program has established a record of meaningful and lasting improvement to access and quality in postsecondary education. A final report at the end of the grant period is required of all funded projects by Education Department regulations.

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 2140. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at (202) 708–9266. 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. 02–27540 Filed 10–29–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, November 13, 2002, 6 p.m.–9:30 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Reports from the Environmental Restoration, Stewardship, and Waste Management Committees
- Presentation focusing on the draft EPA report ''September 2001 Sampling Report for the Scarboro Community, Oak Ridge, Tennessee''
- Public Comment Period

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments. This federal register notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC on October 25, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–27571 Filed 10–29–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket Nos. CP01–409–001, CP01–410–001, CP01–411–001 and CP01–444–001]

Federal Energy Regulatory Commission

September 9, 2002.

Calypso Pipeline, LLC, and Tractebel Calypso Pipeline, LLC; Notice of Filing

Take notice that on August 30, 2002, Calypso Pipeline, LLC (Calypso) and Tractebel Calypso Pipeline, LLC (Tractebel Calypso) jointly filed an amendment in the above-referenced dockets to reflect a change in ownership associated with the applications filed on July 20, 2001, and September 19, 2001, by Calypso (Calypso Application) in the same docketed proceedings. The August 30, 2002 filing requests that the Commission accept a substitution of Tractebel Calypso as the applicant in the pending Calypso Application to reflect the change in ownership and the filed revisions to certain exhibits in the Calypso Application. These revisions reflect only a change in ownership. The application is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 208–1659.

By the Calypso Application, Calypso requests authorization to construct, own, and operate a new pipeline system consisting of approximately a 36 mile, 24-inch offshore segment and approximately a 5.8 mile, 24-inch onshore segment (Calypso Pipeline Project). The offshore pipeline will extend from the boundary of the U.S. Exclusive Economic Zone (EEZ) and the Bahama EEZ, off the southeast Florida coastline to shore at Port Everglades in Fort Lauderdale, Florida. The proposed onshore pipeline segment will be located in Broward County, Florida. The onshore pipeline segment will connect the offshore pipeline with Florida Gas Transmission Company's (''FGT'') existing 24-inch Lauderdale Lateral at Mile Post 1.6 in Broward County, Florida. Calypso's proposed pipeline was designed to transport up to 832,000 MMBtu per day.

Calypso and Tractebel Calypso have executed a Purchase and Sale Agreement (PSA) for the Calypso Pipeline Project. Per the PSA, Tractrebel Calypso will acquire the assets related to the Calypso Pipeline Project. Those assets consist principally of the Calypso Application; the Enron LNG Marketing, LLC Precedent Agreement; and various other surveys, permits, easements, and rights-of-way applications and engineering work product. The sale of the Calypso Pipeline Project to Tractebel Calypso ultimately is subject to the approval of the Bankruptcy Court. Tractebel Calypso will then notify the Commission of the closing of the transaction, and will thereafter be considered the applicant of record under the Calypso Application, with all the rights and responsibilities attached to such status.

Any questions regarding the application are to be directed to Michael J. Zimmer, Esq., Baker & McKenzie, 815 Connecticut Avenue, NW., Washington, DC, 20006.

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 September 30, 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.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project.

This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

The Commission strongly encourages electronic filings of comments, protests, and interventions 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. 02–27655 Filed 10–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–432–000]

Clear Creek Storage Company, L.L.C.; Notice of Application

September 9, 2002.

Take notice that on August 30, 2002, Clear Creek Storage Company, L.L.C. (Clear Creek), 180 East 100 South, Salt Lake City, Utah 84111, filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Rules and Regulations, for authorization to operate withdrawal Well No. 35–4B also as an injection well, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 219–2157.

Clear Creek states that the purpose of the proposed project is to benefit existing customers by providing necessary optimization and redundancy in reservoir injection capability thereby enhancing the reliability of Clear Creek's storage-transportation system during normal injection and withdrawal activities, and in the event of pipeline failure or routine system maintenance. Clear Creek further states that use of Well No. 35–4B for both currently approved withdrawal, and injection, will not result in any change to the currently authorized maximum inventory of natural gas stored in Clear Creek; 8.0 Bcf at 14.73 psia and 60° F, or the maximum shut-in bottom hole reservoir pressure of 5,500 psig.

Questions regarding the details of this proposed project should be directed to Michael B. McGinley, Vice President, Clear Creek Storage Company, L.L.C., 180 East 100 South Street, P.O. Box 45601, Salt Lake City, Utah 84111 at Phone: (801) 324–2527, Fax: (801) 324–2066, or e-mail: *MikeMcg@Questar.com*.

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 September 30, 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.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

The Commission strongly encourages electronic filings. 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 amendment 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. 02–27656 Filed 10–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–763–003, et al.]

Indigo Generation LLC, et al.; Electric Rate and Corporate Filings

October 23, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Indigo Generation LLC, Larkspur Energy LLC and Wildflower Energy LP (collectively the Wildflower Entities)

[Docket No. ER02–763–003]

Take notice that on October 21, 2002, Indigo Generation LLC, Larkspur Energy LLC and Wildflower Energy LP (collectively the Wildflower Entities) supplemented their June 26, 2002 filing in compliance with the directives of the Commission in a letter order dated June 11, 2002 in the above-captioned dockets.

Comment Date: November 12, 2002.

2. PECO Energy Company

[Docket No. ER02–1779–001]

Take notice that on October 21, 2002, PECO Energy Company (PECO) submitted for filing First Revised Page 32 to the Interconnection Agreement between PECO, and Rock Springs Generation LLC and CED Rock Springs, Inc. (Rock Springs/CED), and requests an effective date of October 21, 2002. The Interconnection Agreement had originally been filed by PECO Energy unexecuted. The unexecuted Interconnection Agreement was designated as Service Agreement No. 669 under PJM Interconnection L.L.C.'s (PJM) FERC Electric Tariff Fourth Revised Volume No. 1, and accepted by the Commission for filing with an effective date of May 10, 2002, subject to PECO Energy making this compliance filing. Original Page 32 has been revised to reflect the electronic signatures of the parties to the Interconnection Agreement.

Other than the addition of the parties' signatures, the Interconnection Agreement remains unchanged. Copies of this filing were served on Rock Springs/CED and PJM.

Comment Date: November 12, 2002.

3. New England Power Pool and ISO New England Inc.

[Docket No. ER02–2330–003]

Take notice that on October 21, 2002, the New England Power Pool (NEPOOL) Participants Committee and ISO New England Inc. submitted revisions to Market Rule 1 in response to requirements of the Commission's September 20, 2002 order in New England Power Pool *et al.*, 100 FERC ¶ 61,287 (2002).

The NEPOOL Participants Committee states that copies of these materials were sent to all persons identified on the service lists in the captioned proceedings, the NEPOOL Participants and the six New England state governors and regulatory commissions.

Comment Date: November 12, 2002.

4. PPL Electric Utilities Corporation

[Docket No. ER03–3–001]

Take notice that on October 21, 2002, PPL Electric Utilities Corporation (PPL Electric) filed an executed Interconnection Agreement between PPL Electric and Allegheny Electric Cooperative, Inc. for interconnection at the Renovo/Chapman delivery point. The executed Interconnection Agreement replaces the unexecuted version that was filed in this docket on October 1, 2002.

Comment Date: November 12, 2002.

5. PPL Electric Utilities Corporation

[Docket No. ER03–4–001]

Take notice that on October 21, 2002, PPL Electric Utilities Corporation (PPL Electric) filed an executed Interconnection Agreement between PPL Electric and Allegheny Electric Cooperative, Inc. for interconnection at the Fairfield delivery point. The executed Interconnection Agreement replaces the unexecuted version that was filed in this docket on October 1, 2002.

Comment Date: November 12, 2002.

6. PECO Energy Company

[Docket No. ER03–63–000]

Take notice that on October 21, 2002 PECO Energy Company (PECO) submitted for filing an Interconnection Agreement by and between PECO and FPL Energy Marcus Hook, L.P. (FPL) for Generation Interconnection and Parallel Operation, designated as Service Agreement No. 791 under PJM

Interconnection, L.L.C.''s FERC Electric Tariff, Fourth Revised Volume No. 1, to be effective on October 21, 2002. Copies of this filing were served on Visteon and PJM.

Comment Date: November 12, 2002.

7. PECO Energy Company

[Docket No. ER03–64–000]

Take notice that on October 21, 2002, PECO Energy Company (PECO) submitted for filing a Construction Agreement between PECO and Fairless Energy, LLC (Fairless Energy) related to the Fairless Energy Station, to be located in Fairless Hills, Pennsylvania. The Construction Agreement was designated as Service Agreement 792 under PJM Interconnection L.L.C.'s (PJM) FERC Electric Tariff Fourth Revised Volume No. 1. The proposed effective date for the Construction Agreement is October 21, 2002. Copies of this filing were served on Fairless Energy and PJM.

Comment Date: November 12, 2002.

8. Allegheny Trading Finance Company

[Docket No. ER03–65–000]

Take notice that on October 21, 2002, Allegheny Trading Finance Company (ATF) filed a market rate tariff of general applicability under which it proposes to sell capacity and energy to affiliates and non-affiliates at market-based rates, and to make such sales to franchised public utility affiliates at rates capped by a publicly available regional index price. ATF requests an effective date of October 22, 2002.

Comment Date: November 12, 2002.

9. Idaho Power Company

[Docket No. ER03–66–000]

Take notice that on October 21, 2002, Idaho Power Company filed the Goshen Series Capacitor Replacement Agreement between Idaho Power Company and PacifiCorp.

Comment Date: November 12, 2002.

10. PJM Interconnection, L.L.C.

[Docket No. ER03–67–000]

Take notice that on October 21, 2002 PJM Interconnection, L.L.C. (PJM), submitted for filing thirty-three executed interconnection service agreements and interim interconnection service agreements between PJM and Conectiv Bethlehem, Inc., Industrial Power Generating Corp., PPL Martins Creek, L.L.C., PSEG Nuclear LLC, MM Hackensack Energy L.L.C., Delaware Municipal Electric Corporation, Conectiv Delmarva Generation, Inc., Constellation Power Source Generation, Inc., PPL Holtwood, L.L.C., Energy Systems North East, L.L.C., Conectiv Mid-Merit Inc., Lebanon Methane Recovery, Inc., Williams Generation Company—Hazleton, Somerset Windpower, L.L.C., AES Red Oak, L.L.C., Susquehanna Electric Company, LMB Funding, Limited Partnership, PPL Susquehanna, LLC, AES Ironwood L.L.C., Sight and Sound Ministries, Inc., Motiva Enterprises, L.L.C., Public Service Electric and Gas Company, PSEG Power, L.L.C., PPL Montour, LLC, Mantua Creek Generating Company, LP, and Liberty Electric Power, LLC, and three notices of cancellation of certain ISAs and Interim ISAs that have been superceded.

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective dates agreed to by the parties. Copies of this filing were served upon each of the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: November 12, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27658 Filed 10–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–2–000, et al.]

WPS Empire State, Inc., et al.; Electric Rate and Corporate Regulation Filings

October 22, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. WPS Empire State, Inc

[Docket No. EC03–2–000]

Take notice that on October 17, 2002, WPS Empire State, Inc. (Empire) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's regulations, a request for authorization to engage in an internal restructuring whereby Empire transfers its ownership interest in three generating and associated facilities to three limited liability companies that will be wholly-owned by Empire

Copies of the filing were served on the New York Public Service Commission.

Comment Date: November 7, 2002.

2. New England Power Company and Central Vermont Public Service Corporation

[Docket No. EC03–3–000]

Take notice that on October 18, 2002, New England Power Company (NEP) and Central Vermont Public Service Corporation (CVPS) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act for authorization to transfer from NEP to CVPS the ownership of a section of a 0.8 mile long 34.5 kV transmission line associated with electric service provided to American Paper Mills of Vermont, Inc. located in Gilman, Vermont.

Comment Date: November 8, 2002.

3. WPS Beaver Falls Generation, LLC, WPS Niagara Generation, LLC, and WPS Syracuse Generation, LLC

[Docket Nos. EG03–5–000, EG03–6–000, and EG03–7–000]

Take notice that on October 17, 2002, WPS Beaver Falls Generation, LLC (WPS Beaver Falls) WPS Niagara Generation, LLC (WPS Niagara) and WPS Syracuse Generation, LLC (WPS Syracuse) each having a business address of 1088 Springhurst Toad, Green Bay, Wisconsin, 54304, tendered for filing with the Federal Energy

Regulatory Commission (Commission), an Application for Determination of Exempt Wholesale Generator Status pursuant to part 365 of the Commission's Regulations (18 CFR part 365).

Applicants are each wholly-owned subsidiaries of WPS Empire State, Inc. (WPS Empire), a New York corporation and exempt wholesale generator which owns three generating facilities located in upstate New York: (1) The approximately 95 MW Beaver Falls Generating Facility located in Crogham (Beaver Falls Facility); (2) the approximately 53 MW Niagara Falls Generating Facility located in Niagara Falls (Niagara Facility); (3) and the approximately 108 MW Syracuse Generating Facility located in Solvay (Syracuse Facility). As part of an internal corporate reorganization, WPS Empire will transfer the Beaver Falls Facility to Applicant WPS Beaver Falls Generation, LLC, the Niagara Facility to WPS Niagara Generation, LLC, and the Syracuse Facility to WPS Syracuse Generation, LLC. No operational changes are anticipated as a result of these transactions.

Comment Date: November 12, 2002.

4. FPL Energy Hancock County Wind, LLC

[Docket No. EG03–8–000]

Take notice that on October 18, 2002, FPL Energy Hancock County Wind, LLC (the Applicant), with its principal office at 700 Universe Blvd., Juno Beach, Florida 33408, filed with the Federal Energy Regulatory Commission (the Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant states that it is a Delaware limited liability company engaged directly and exclusively in the business of owning and operating an approximately 98 MW wind-powered generation facility located in Hancock County, Iowa. Electric energy produced by the facility will be sold at wholesale.

Comment Date: November 12, 2002.

5. Arizona Public Service Company v. Idaho Power Company

[Docket No. EL99–44–007]

Take notice that on October 10, 2002, Idaho Power Company tendered for filing with the Federal Energy Regulatory Commission (Commission) compliance filing pursuant to the Commission's September 5, 2002 Order, Opinion No. 460, 100 FERC ¶ 61,253 (2002).

Comment Date: November 12, 2002.

6. City of Azusa, California

[Docket No. EL03–14–000]

Take notice that on October 18, 2002, the City of Azusa, California (Azusa) submitted a Petition for a Declaratory Order (1) determining that Azusa's proffered Transmission Revenue Requirement (TRR) is appropriate under the California Independent System Operator Corporation's Tariff on file at the Commission for purposes of Azusa's becoming a Participating Transmission Owner; (2) approving Azusa's Transmission Owner (TO) Tariff; (3) waiving the filing fee otherwise applicable to a petition for declaratory order; and (4) granting any other relief or waivers necessary or appropriate for approval or implementation of Azusa's TRR and TO Tariff effective as of the later of January 1, 2003 or the effective date of a Transmission Control Agreement acceptable to Azusa.

Comment Date: November 18, 2002.

7. City of Anaheim, California

[Docket No. EL03–15–000]

Take notice that on October 18, 2002, the City of Anaheim, California (Anaheim) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Petition for a Declaratory Order (1) determining that Anaheim's proffered Transmission Revenue Requirement (TRR) is appropriate under the California Independent System Operator Corporation's Tariff on file at the Commission for purposes of Anaheim's becoming a Participating Transmission Owner; (2) approving Anaheim's Transmission Owner (TO) Tariff; (3) waiving the filing fee otherwise applicable to a petition for declaratory order; and (4) granting any other relief or waivers necessary or appropriate for approval or implementation of Anaheim's TRR and TO Tariff effective as of the later of January 1, 2003 or the effective date of a Transmission Control Agreement acceptable to Anaheim.

Comment Date: November 18, 2002.

8. PPL Electric Utilities Corporation

[Docket No. EL03–16–000]

Take notice that on October 18, 2002, PPL Electric Utilities Corporation filed with the Federal Energy Regulatory Commission (Commission) a petition requesting that the Commission issue a declaratory order stating that, in the event that the Borough of Olyphant, Pennsylvania, takes over service to certain PPL's existing retail customers, neither the Settlement Agreement approved in Boroughs of Lansdale, et al., Docket No. SC97–1–000, nor the Commission order approving that Agreement, would affect the existing retail stranded cost charges that such customers would be required to continue paying pursuant to orders of the Pennsylvania Public Utility Commission.

Comment Date: November 18, 2002.

9. Choctaw Generation Limited Partnership

[Docket No. ER98–3774–001]

Take notice that on October 17, 2002, Choctaw Generation Limited Partnership tendered for filing its Triennial Market Power Update.

Comment Date: November 7, 2002.

10. Dighton Power Associates, L.P.

[Docket No. ER99–616–001]

Take notice that on October 18, 2002, Dighton Power Associates, L.P. submitted for filing its triennial market analysis update in compliance with the Commission order issued in this docket on January 7, 1999.

Comment Date: November 8, 2002.

11. WPS Westwood Generation, LLC

[Docket No. ER02–2361–001]

Take notice that on October 17, 2002, WPS Westwood Generation, LLC (Westwood) filed supplementary cost support to its July 24, 2002 filing for recovery of the costs for Reactive Supply and Voltage Control from Generation Sources Service (Reactive Power Service) in response to the Commission's September 20, 2002 deficiency letter in this proceeding.

Comment Date: November 7, 2002.

12. Virginia Electric and Power Company

[Docket No. ER02–2485–001]

Take notice that on October 17, 2002, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing a revised first page of its August 21, 2002 transmittal letter filed in these proceedings (Revised First Page) and a revised cover sheet (Revised Cover Sheet) to the Generator Interconnection and Operating Agreement (Interconnection Agreement) between Dominion Virginia Power and CPV Cunningham Creek LLC filed in these proceedings. The Revised First Page and Revised Cover Sheet have been modified to reflect a new proposed effective date in compliance with an informal Commission Staff request.

Dominion Virginia Power respectfully requests that the Commission accept the Revised First Page and the Revised Cover Sheet to the Interconnection Agreement to allow them to become effective on August 20, 2002.

Copies of the filing were served upon parties on the Commission's official

service list and the Virginia State Corporation Commission.

Comment Date: November 7, 2002.

13. American Electric Power

[Docket No. ER02–2507–001]

Take notice that on October 17, 2002, American Electric Power Service Corporation (AEPSC) tendered for filing with the Commission a Compliance Filing in the above referenced Docket. On August 28, 2002 AEPSC had filed a Facilities, Operation and Maintenance Agreement (Facility Agreement) dated August 1, 2002, between Columbus Southern Power Company (d/b/a AEP), Consolidated Electric Cooperative, Inc. (hereinafter called CEC) and Buckeye Power, Inc. (hereinafter called Buckeye).

The Facility Agreement provides for the establishment of a new delivery point, pursuant to the provisions of the Power Delivery Agreement between Columbus Southern Power, Buckeye, The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, Monongahela Power Company, Ohio Power Company and Toledo Edison Company, dated January 1, 1968. AEP requested an effective date of October 1, 2002 for the Facility Agreement.

On October 2, 2002 the Commission issued an Order directing AEPSC to correct certain deficiencies in the August 28, 2002 submission. This subsequent filing complies with the Commission's Order of October 2, 2002.

AEPSC states that copies of its Compliance Filing were served upon CEC, Buckeye and the Public Utilities Commission of Ohio.

Comment Date: November 8, 2002.

14. CED Rock Springs, Inc.

[Docket No. ER02–2546–001]

Take notice that on October 18, 2002, CED Rock Springs, Inc. (CEDRS) tendered for filing an Amendment to its Application dated September 6, 2002, which sought an Order accepting CEDRS's FERC Electric Rate Schedule No. 1, granting certain blanket approvals, including the authority to sell electricity at market-base rates, and waiving certain regulations of the Commission. CEDRS also filed its FERC Electric Rate Schedule No. 1, seeking an effective date of October 10, 2002.

Comment Date: November 8, 2002.

15. AES NewEnergy, Inc.,

[Docket No. ER02–2567–001]

Take notice on October 18, 2002, Constellation NewEnergy, Inc. (NewEnergy) submitted for filing a revised market-based tariff (Tariff) reflecting its name change from AES NewEnergy, Inc. to Constellation NewEnergy, Inc., and the elimination of its Code of Conduct with Central Illinois Light Co. and Indianapolis Power & Light Company, which is no longer applicable. NewEnergy requests waiver of the 60-day prior notice requirement to allow its revised Tariff to become effective as of September 9, 2002.

Comment Date: November 8, 2002.

16. MidAmerican Energy Company

[Docket No. ER02–2603–001]

Take notice that on October 18, 2002, MidAmerican Energy Company (MidAmerican), filed with the Federal Energy Regulatory Commission (Commission) a supplement to its September 26, 2002, filing in this docket, consisting of a red-lined version of the Generation Interconnection Contract (Contract), entered into by MidAmerican, as transmission and distribution delivery services provider (Delivery), and MidAmerican, as wholesale merchant (Merchant). The supplement consists of a red-lined version of the Contract, showing revisions to Exhibits A and B, and the addition of Exhibit F.

MidAmerican requests an effective date of May 1, 2002, for the Revised Contract and seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment Date: November 8, 2002.

17. Wisconsin Public Service Corporation

[Docket No. ER03–29–000]

Take notice that on October 10, 2002, Wisconsin Public Service Corporation (WPSC) tendered for filing a revised partial requirements service agreement with Washington Island (WIEC). Fourth Revised Service Agreement No. 9 provides WIEC's contract demand nominations for January 2003—December 2007, under WPSC's W–2A partial requirements tariff.

The company states that copies of this filing have been served upon WIEC and to the State Commissions where WPSC serves at retail.

Comment Date: November 4, 2002.

18. Westar Energy, Inc.

[Docket No. ER03–50–000]

Take notice that on October 17, 2002, pursuant to Rule 204 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.204, Westar Energy, Inc. (Westar Energy), tendered for filing an Application for Waiver of the Commission's FAC regulations, 18 CFR 35.14(a)(6). Westar Energy states that the waiver is necessary to enable it to recover its costs related to coal contract buy-down and buy-out payments through its wholesale fuel adjustment clause (FAC).

Comment Date: November 7, 2002.

19. Southern California Edison Company

[Docket No. ER03–52–000]

Take notice that on October 17, 2002, Southern California Edison Company (SCE) tendered for filing a Service Agreement for Wholesale Distribution Service under SCE's Wholesale Distribution Access Tariff and an Interconnection Facilities Agreement (Agreements) between SCE and NM Milliken Genco LLC (NM Milliken Genco). SCE respectfully requests the Agreements become effective on October 18, 2002.

NM Milliken Genco intends to install, own and operate four 1,440 kW reciprocating engines operating on landfill gas (Milliken Landfill Project) at the Milliken Landfill located in Ontario, California. These Agreements specify the terms and conditions under which SCE will interconnect NM Milliken Genco's Milliken Landfill Project to its electrical system and provide Distribution Service for up to 5.44 MW of power produced Milliken Landfill Project.

Copies of this filing were served upon the Public Utilities Commission of the State of California and NM Milliken Genco.

Comment Date: November 7, 2002.

20. Southern California Edison Company

[Docket No. ER03–53–000]

Take notice that on October 17, 2002, Southern California Edison Company (SCE) tendered for filing a Service Agreement for Wholesale Distribution Service under SCE's Wholesale Distribution Access Tariff and an Interconnection Facilities Agreement (Agreements) between SCE and NM Mid Valley Genco LLC (NM Mid Valley Genco). SCE respectfully requests the Agreements become effective on October 18, 2002.

NM Mid Valley Genco intends to install, own and operate three 1,440 kW reciprocating engines operating on landfill gas (Mid Valley Landfill Project) at the Mid Valley Landfill located in Rialto, California. These Agreements specify the terms and conditions under which SCE will interconnect NM Mid Valley Genco's Mid Valley Landfill Project to its electrical system and

provide Distribution Service for up to 4.08 MW of power produced Mid Valley Landfill Project.

Copies of this filing were served upon the Public Utilities Commission of the State of California and NM Mid Valley Genco.

Comment Date: November 7, 2002.

21. WPS Beaver Falls Generation, LLC, WPS Niagara Generation, LLC, and WPS Syracuse Generation, LLC

[Docket Nos. ER03–54–000, ER03–55–000, and ER03–56–000]

Take notice that on October 17, 2002, WPS Empire State, Inc. (Empire) and its proposed subsidiaries, including WPS Beaver Falls Generation, LLC (WPS Beaver Falls), WPS Niagara Generation, LLC (WPS Niagara) and WPS Syracuse Generation, LLC (WPS Syracuse) (collectively, the Companies), hereby tendered for filing requests for market-based rate authority for each of the Companies. Applicants request that the Commission make the market-based rate tariffs filed for the Companies effective on December 17, 2002, sixty days after the date of this filing.

Comment Date: November 7, 2002.

22. Southern Company Services, Inc.

[Docket No. ER03–57–000]

Take notice that on October 17, 2002, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company (APC), filed an amendment (the Amendment) to the Interconnection Agreement Between mobile Energy Services Company, L.L.C. and APC (the Agreement) (Service Agreement No. 416 under Southern Operating Companies' FERC Electric Tariff, Fourth Revised Volume No. 5). Pursuant to the Amendment, the term of the Agreement will be extended until November 18, 2002.

Comment Date: November 7, 2002.

23. Cinergy Services, Inc.

[Docket No. ER03–58–000]

Take notice that on October 18, 2002. Cinergy Services, Inc. (Cinergy), tendered for filing a form of service agreement for ancillary services to be incorporated into the Cinergy Open Access Transmission Tariff (OATT), Second Revised, Volume No. 5, and contemporaneously submitted for filing an executed electric service agreement for ancillary services, designated as Service Agreement No. 344 under the Cinergy OATT between Cinergy and Midwest Independent System Operator (MISO). Cinergy respectfully requests an effective date November 1, 2002.

Copies of the filing have been served on MISO, the Public Utility Commission of Ohio, the Indiana Utility Regulatory Commission and ancillary service customers under the Cinergy OATT.

Comment Date: November 8, 2002.

24. Entergy Services, Inc.

[Docket No. ER03–59–000]

Take notice that on October 17, 2002, Entergy Services, Inc., on behalf of Entergy New Orleans, Inc., tendered for filing an unexecuted Interconnection and Operating Agreement with Duke Energy Orleans, LLC (Duke Orleans), and a Generator Imbalance Agreement with Duke Orleans.

Comment Date: November 7, 2002.

25. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER03–60–000]

Take notice that on October 15, 2002, Desert Generation & Transmission Co-operative, Inc. Submitted an informational filing, providing the exact amount paid as a 2001 Rate Rebate to each of its six member cooperatives under Service Agreement Nos. 1 through 6 of FERC Electric Tariff, Original Volume No. 1.

Comment Date: November 5, 2002.

26. Ameren Services Company

[Docket No.ER03–61–000]

Take notice that on October 18, 2002, Ameren Services Company (ASC) tendered for filing Service Agreements for Firm Point-to-Point Transmission Service and Non-Firm Point-to-Point Transmission Service between ASC and Dominion Energy Marketing, Inc., PLL EnergyPlus, LLC, RWE Trading Americas Inc. and Select Energy, Inc. (the parties). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: November 8, 2002.

27. The New Power Company

[Docket No. ER03–62–000]

Take notice that on October 18, 2002, The New Power Company (NewPower) tendered for filing a Notice of Cancellation of its Rate Schedule, Designated as Rate Schedule FERC No. 1. New Power requests cancellation effective January 31, 2003, which is more than sixty (60) days and less than 120 days after the date of this filing.

Comment Date: November 8, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27657 Filed 10–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting; Notice of Vote, Explanation of Action Closing Meeting and List of Persons to Attend

October 23, 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: October 30, 2002, (within a relatively short time before or after the regular Commission Meeting).

PLACE: Hearing Room 5, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-Public, Investigations and Inquiries And Enforcement Related Matters.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

Chairman Wood and Commissioners Massey, Breathitt and Brownell voted to hold a closed meeting on October 30, 2002. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public

Reference Room at 888 First Street, NE, Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,

Secretary.

[FR Doc. 02–27669 Filed 10–25–02; 4:16 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

October 23, 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: October 30, 2002, 10 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) 502–8400, for a recording listing items stricken from or added to the meeting, call (202) 502–8627.

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.

809th—Meeting October 30, 2002, Regular Meeting, 10 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

A–3.
Docket#, AD02–22, 000, Midwest Energy Infrastructure Assessment

Markets, Tariffs and Rates—Electric

E–1.
Omitted

E–2.
Omitted

E–3.
Docket#, ER02–2541, 000, Midwest Independent Transmission System Operator, Inc.

E–4.
Docket#, ER02–1400, 000, Illinois Power Company
Other#s, ER02–1400, 001, Illinois Power Company
ER02–1400, 002, Illinois Power Company

E–5.
Docket#, OA96–158, 004, Entergy Services, Inc.
Other#s, OA97–657, 001, Entergy Services, Inc.

E–6.
Docket#, ER00–3591, 012, New York Independent System Operator, Inc.
Other#s, EL00–70, 008, New York Independent System Operator, Inc.
ER00–1969, 014, New York Independent System Operator, Inc.
ER00–3038, 007, New York Independent System Operator, Inc.
ER02–2081, 000, New York Independent System Operator, Inc.

E–7.
Docket#, EL00–95, 063, *San Diego Gas & Electric Company,* v. *Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange*
Other#s, EL00–95, 064, *San Diego Gas & Electric Company,* v. *Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange*
EL00–97, 005, Reliant Energy Power Generation, Inc., Dynegy Power Marketing, Inc., and Southern Energy California, L.L.C., v. *California Independent System Operator Corporation*
EL00–97, 006, Reliant Energy Power Generation, Inc., Dynegy Power Marketing, Inc., and *Southern Energy California, L.L.C.,* v. *California Independent System Operator Corporation*
EL00–98, 052, Investigation of Practices of the California Independent System Operator and the California Power Exchange
EL00–98, 053, Investigation of Practices of the California Independent System Operator and the California Power Exchange
EL00–104, 010, *California Electricity Oversight Board* v. *All Sellers of Energy and Ancillary Services Into the Energy and Ancillary Services Markets Operated by the California Independent System Operator and the California Power Exchange*
EL00–104, 011, *California Electricity Oversight Board* v. *All Sellers of Energy and Ancillary Services Into the Energy and Ancillary Services Markets Operated by the California Independent System Operator and the California Power Exchange*
EL00–107, 011, Public Meeting in San Diego, California
EL00–107, 012, Public Meeting in San Diego, California
EL01–1, 011, *California Municipal Utilities Association* v. *All Jurisdictional Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange*
EL01–1, 012, *California Municipal Utilities Association* v. *All Jurisdictional Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange*
EL01–2, 005, *Californians for Renewable Energy, Inc. (CARE),* v. *Independent Energy Producers, Inc.,* and All Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange; All Scheduling Coordinators Acting on Behalf of the Above Sellers; California Independent System Operator Corporation; and California Power Exchange Corporation
EL01–2, 006, *Californians for Renewable Energy, Inc. (CARE),* v. *Independent Energy Producers, Inc.,* and All Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange; All Scheduling Coordinators Acting on Behalf of the Above Sellers; California Independent System Operator Corporation; and California Power Exchange Corporation
EL01–68, 015, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western System Coordinating Council
EL01–68, 016, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western System Coordinating Council

E–8.
Docket#, ER02–352, 003, Southern Company Services, Inc.

E–9.

Docket#, ER98–1438, 010, Midwest Independent Transmission System Operator, Inc.
Other#s *et al.,* EL02–65, 000, Alliance Companies, *et al.*

E–10.
Docket#, ER98–1440, 000, Central Vermont Public Service Corporation

E–11.
Docket#, QF92–198, 004, Lake Cogen, Ltd.
Other#s, EL02–124, 000, Lake Cogen, Ltd.

E–12.
Docket#, EC02–71, 000, American Transmission Systems, Inc. and PJM Interconnection, L.L.C.
Other#s, ER02–1865, 000, American Transmission Systems, Inc. and PJM Interconnection, L.L.C.

E–13.
Omitted

E–14.
Docket#, ER99–4462, 001, California Independent System Operator Corporation

E–15.
Omitted

E–16.
Docket#, EC01–156, 001, Alliant Energy Corporate Services, Inc., MidAmerican Energy Company, Xcel Energy Services, Inc., and TRANSLink Transmission Company, L.L.C.
Other#s, ER01–3154, 001, Alliant Energy Corporate Services, Inc., MidAmerican Energy Company, Xcel Energy Services, Inc., and TRANSLink Transmission Company, L.L.C.

E–17.
Omitted

E–18.
Docket#, EL01–122, 003, PJM Interconnection L.L.C.
Other#s, EL01–122, 002, PJM Interconnection L.L.C.
EL01–122, 004, PJM Interconnection L.L.C.

E–19.
Docket#, ER02–1451, 001, Ameren Energy Marketing Company

E–20.
Docket#, ER02–1663, 001, Tampa Electric Company
Other#s, ER02–1663, 002, Tampa Electric Company

E–21.
Docket#, ER02–711, 002, American Electric Power Service Corporation

E–22.
Docket#, ER00–2360, 004, Pacific Gas and Electric Company

E–23.
Docket#, ER02–2064, 002, Choctaw Generation LP

E–24.
Docket#, OA02–8, 000, Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company

E–25.
Docket#, RM01–8, 000, Filing Requirements for Electric Utility

E–26.
Docket#, EL00–95, 000, *San Diego Gas & Electric Company* v. *Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange*
Other#s, EL00–95, 048, *San Diego Gas & Electric Company* v. *Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange*
EL00–98, 000, Investigation of Practices of the California Independent System Operator and the California Power Exchange
EL00–98, 042, Investigation of Practices of the California Independent System Operator and the California Power Exchange

E–27.
Docket#, EL02–112, 000, *FirstEnergy Solutions Corp.* v. *PJM Interconnection, L.L.C.*
Other#s, EL02–120, 000, *Edison Mission Energy* v. *PJM Interconnection, L.L.C.*

E–28.
Docket#, EL02–125, 000, KeySpan Energy Development Corporation, KeySpan Ravenswood, LLC, New York Power Authority, Electric Power Supply Association, and *Independent Power Producers of New York, Inc.,* v. *New York Independent System Operator, Inc.*

E–29.
Docket#, EL02–122, 000, Sithe Power Marketing, L.P., and *Exelon Generation Company, LLC* v. *ISO New England, Inc.*

E–30.
Docket#, EL02–116, 000, *Cargill Alliant, LLC* v. *New York Independent System Operator, Inc.*

E–31.
Docket#, RM95–8, 006, Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities
Other#s, RM94–7, 007, Recovery of Stranded Costs by Public Utilities and Transmitting Utilities

E–32.
Docket#, PL02–7, 000, Standard of Review for Proposed Changes to Market-Based Rate Contracts for Wholesale Sales of Electric Energy by Public Utilities

E–33.
Docket#, EL00–24, 000, Village of Jackson Center, Ohio, Village of Versailles, Ohio, Village of Arcanum, Ohio, Village of Eldorado, Ohio, Village of Lakeview, Ohio, Village of Mendon, Ohio, Village of Minster, Ohio, Village of New Bremen, Ohio, Village of Waynesfield, Ohio and *Village of Yellow Springs, Ohio* v. *Dayton Power & Light Company*

E–34.
Docket#, ER02–766, 000, Florida Power & Light Company
Other#s, ER02–766, 001, Florida Power & Light Company
ER02–766, 002, Florida Power & Light Company
ER02–766, 003, Florida Power & Light Company
ER02–766, 004, Florida Power & Light Company

E–35.
Docket#, ER97–1523, 063, Central Hudson Gas & Electric Corporation, Consolidated Edison Co., of New York, Inc., Long Island Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation
Other#s, OA97–470, 058, Central Hudson Gas & Electric Corporation, Consolidated Edison Co., of New York, Inc., Long Island Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation
ER97–4234, 056, Central Hudson Gas & Electric Corporation, Consolidated Edison Co., of New York, Inc., Long Island Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation

E–36.
Docket#, EL02–78, 000, *New York State Electric & Gas Corporation* v. *New York State Electric and Gas Corporation*

E–37.
Docket#, EL02–74, 001, *Colton Power L.P., and City of Colton, CA* v. *Southern California Edison Co.*

E–38.
Docket#, ER97–2358, 004, Pacific Gas and Electric Company
Other#s, ER97–2355, 006, Southern

California Edison Company
ER97–2364, 005, San Diego Gas & Electric Company
ER97–4235, 003, San Diego Gas & Electric Company
ER97–4235, 004, San Diego Gas & Electric Company
ER98–497, 004, San Diego Gas & Electric Company
ER98–2322, 002, Southern California Edison Company
ER98–2351, 002, Pacific Gas and Electric Company
ER98–2371, 002, San Diego Gas & Electric Company
ER97–2358, 003, Pacific Gas and Electric Company
ER98–2351, 003, Pacific Gas and Electric Company
ER97–2355, 004, Southern California Edison Company
ER98–2322, 001, Southern California Edison Company
ER97–2364, 004, San Diego Gas & Electric Company
ER98–497, 003, San Diego Gas & Electric Company
ER98–2371, 001, San Diego Gas & Electric Company

E–39.
Docket#, EL02–91, 000, *Williams Energy Marketing & Trading Company* v. *Southern Company Services, Inc.*

E–40.
Docket#, ER01–315, 001, Southern California Edison Company

E–41.
Docket#, SC00–1, 000, North Western Energy, LLC

E–42.
Docket#, ER02–2519, 000, PJM Interconnection L.L.C.
Other#s, ER02–2519, 001, PJM Interconnection L.L.C.
ER02–2519, 002, PJM Interconnection L.L.C.

E–43.
Docket#, ER02–2536, 000, Bank of America, N.A.

Miscellaneous Agenda

M–1.
Docket#, RM02–7, 000, Accounting, Financial Reporting and Rate Filing Requirements for Asset Retirement Obligations

Markets, Tariffs and Rates—Gas

G–1.
Omitted

G–2.
Docket#, RP99–301, 055, ANR Pipeline Company

G–3.
Docket#, RP99–301, 056, ANR Pipeline Company

G–4.
Docket#, RP02–568, 000, Black Marlin Pipeline Company

G–5.
Omitted

G–6.
Omitted

G–7.
Docket#, RP03–7, 000, Natural Gas Pipeline Company of America

G–8.
Docket#, RP02–543, 000, Northern Border Pipeline Company

G–9.
Docket#, RP02–532, 000, Guardian Pipeline, L.L.C.
Other#s, RP02–534, 000, Guardian Pipeline, L.L.C.

G–10.
Docket#, RP02–550, 000, Tennessee Gas Pipeline Company

G–11.
Docket#, RP02–331, 000, PG&E Gas Transmission, Northwest Corporation
Other#s, RP02–331, 001, PG&E Gas Transmission, Northwest Corporation

G–12.
Docket#, RP96–200, 087, CenterPoint Energy Gas Transmission Company

G–13.
Docket#, RP03–10, 000, Gulf South Pipeline Company, LP

G–14.
Docket#, RP03–12, 000, Kinder Morgan Interstate Gas Transmission LLC

G–15.
Omitted

G–16.
Omitted

G–17.
Docket#, RP02–515, 000, Texas Gas Transmission Corporation

G–18.
Omitted

G–19.
Docket#, RP03–6, 000, Maritimes & Northeast Pipeline, L.L.C.

G–20.
Docket#, RP03–4, 000, Panhandle Eastern Pipe Line Company

G–21.
Docket#, RP95–197, 045, Transcontinental Gas Pipe Line Corporation
Other#s, RP97–71, 037, Transcontinental Gas Pipe Line Corporation

G–22.
Omitted

G–23.
Omitted

G–24.
Docket#, RP00–411, 001, Iroquois Gas Transmission System, Inc.
Other#s, RP01–44, 003, Iroquois Gas Transmission System, Inc.

G–25.
Omitted

G–26.
Docket#, RP02–335, 000, ANR Pipeline Company
Other#s, RP02–335, 001, ANR Pipeline Company

G–27.
Docket#, RP02–4, 002, Maritimes & Northeast Pipeline, L.L.C.

G–28.
Docket#, RP00–337, 003, Kern River Gas Transmission Company
Other#s, RP00–337, 004, Kern River Gas Transmission Company
RP01–93, 003, Kern River Gas Transmission Company
RP01–93, 004, Kern River Gas Transmission Company

G–29.
Docket#, RP02–99, 004, *Shell Offshore Inc.,* v. *Transcontinental Gas Pipe Line Corp.,* Williams Gas Processing—Gulf Coast Co., L.P., Williams Field Services Co., and Williams Gulf Coast Gathering Co., L.L.C.

G–30.
Docket#, RP01–180, 001, San Diego Gas & Electric Company
Other#s, RP01–180, 000, San Diego Gas & Electric Company
RP01–222, 000, Los Angeles Department of Water and Power
RP01–223, 000, *National Association of Gas Consumers* v. *All Sellers of Natural Gas in the United States of America in Interstate Commerce*

G–31.
Docket#, RP00–632, 010, Dominion Transmission, Inc.

G–32.
Omitted

G–33.
Docket#, MG02–4, 000, Williston Basin Interstate Pipeline Company

G–34.
Omitted

G–35.
Docket#, RM98–10, 011, Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services

G–36.
Docket#, RP02–567, 000, High Island Offshore System, L.L.C.

G–37.
Docket#, CP02–17, 002, Texas Eastern Transmission, LP
Other#s, CP02–45, 002, Texas Eastern Transmission, LP

G–38.
Docket#, RP00–494, 001, Williams Gas Pipelines Central, Inc.

G–39.
Docket#, RP99–324, 000, Gulf South Pipeline Company, LP.
Other#s, RP99–324, 001, Gulf South Pipeline Company, LP.
RP99–324, 002, Gulf South Pipeline

Company, LP.
RP99–324, 003, Gulf South Pipeline Company, LP.
G–40.
Docket#, RP02–573, 000, Northern Natural Gas Company

Energy Projects—Hydro

H–1.
Omitted
H–2.
Docket#, P–9974, 049, Halsted Construction, Inc.
H–3.
Omitted
H–4.
Docket#, UL00–3, 003, Homestake Mining Company
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Magalie R. Salas,
Secretary.

[FR Doc. 02–27670 Filed 10–25–02; 4:16 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7401–3]

Proposed Agency Information Collection Activities: Continuing Collection; Comment Request; Information Collection Request for MACT Reporting and Recordkeeping Requirements for the Hazardous Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Information Collection Request for MACT Reporting and Recordkeeping Requirements for the Hazardous Waste Combustors, EPA ICR Number 1773.06, OMB Control Number 2050–0171, expires February 28, 2003. In addition, EPA is also taking into account all subsequent changes to this rule that have been made since its promulgation, and is consolidating these changes under EPA ICR # 1773.06. 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 December 30, 2002.

ADDRESSES: Comments must be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.D. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Call Center 1–(800) 424–9346. For specific information regarding this notice, call Shiva Garg, (703) 308–8459, fax number (703) 308–8433, e-mail *garg.shiva@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Affected Entities

Entities potentially affected by this action are hazardous waste combustors (HWCs) covered by 40 CFR part 63 (Subpart EEE) which generate, treat and store hazardous waste. Examples include hazardous waste incinerators, cement kilns and lightweight aggregate kilns that burn hazardous waste.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this ICR under Docket ID No. RCRA–2002–0030. The official public docket consists of the documents specifically referenced in the ICR, any public comments received, and other information related to this ICR. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20004. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742, and the telephone number for the RCRA Docket is (202) 566–0270.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI, and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket, but will be available only in printed paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public

docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket, visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments in formulating a final decision. However, late comments may be considered if time permits. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. **Note:** Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

(i) *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''Search,'' and then key in Docket ID No. RCRA–2002–0030. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

(ii) *E-mail.* Comments may be sent by electronic mail (e-mail) to *rcra-docket@epa.gov,* Attention Docket ID No. RCRA–2002–0030. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

(iii) *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send one original and two copies of your comments to: RCRA Docket, Environmental Protection Agency, (Mailcode 5305T), 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. RCRA–2002–0030 .

3. *By Hand Delivery or Courier.* Deliver your comments to: RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20004. Attention Docket ID No. RCRA–2002–0030. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.B.

4. *By Facsimile.* Fax your comments to: (202) 566–0224, Attention Docket ID. No. RCRA–2002–0030.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. An original and two copies of the CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 1200 Pennsylvania, Avenue NW., Washington, DC 20460. Attention Docket ID No. RCRA–2002–0030. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI. If you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI, and then identify electronically within the disk or CD ROM the specific information that is CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI,

please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

F. What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collections of information are 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 estimates of the burdens for reporting and record Keeping requirements of the proposed collections of information.

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

(iv) Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, *e.g.*, permitting electronic submission of responses.

II. Specific Information About This ICR Renewal

A. *Title:* Information Collection Request for MACT Reporting and Record Keeping Requirements for the Hazardous Waste Combustors (OMB Control No. 2050–0171; EPA ICR No.1773.06), expiring February 28, 2003. This is a request for extension of a currently approved collection.

B. *Abstract:* EPA regulates the burning of hazardous waste by several source categories of hazardous waste combustors under 40 CFR Part 63, Parts 264/265 (Subpart O), and Part 266 (Subpart H). On September 30, 1999, EPA promulgated (64 FR 52828) standards to control emissions of hazardous air pollutants from incinerators, cement kilns and lightweight aggregate kilns that burn hazardous wastes under 40 CFR Part 63. The ICR # 1773.02 pertaining to the provisions of this rule was approved under OMB Control # 2050–0171, expires on February 28, 2003, and is being renewed.

The emission standards of the September 30, 1999 rule updated the earlier rules in effect on these sources under the Resource Conservation and Recovery Act (RCRA) under 40 CFR Parts 264 and 265, and were issued using both Clean Air Act (CAA) and RCRA authorities in a coordinated fashion. Rules under CAA created maximum achievable control technology (MACT) based standards for hazardous air pollutant emissions, assuring that combustion of hazardous waste in these devices is properly controlled, while the RCRA provisions satisfied our obligation to ensure that hazardous waste combustion is conducted in a manner protective of human health and the environment. We thus consolidated regulatory control of hazardous waste combustion into a single set of regulations, thereby minimizing the potential for conflicting or duplicative federal requirements and burden on the regulated community.

A number of parties, representing interests of both industrial sources and of the environmental community, sought judicial review of the September 30, 1999 rule. On July 24, 2001, the United States Court of Appeals for the District of Columbia Circuit (the Court) granted the Sierra Club's petition for review and vacated the challenged portions of the rule. However, the Court invited us and the parties to the proceeding to file a motion to delay issuance of its mandate to request either that the current standards remain in place or that EPA be allowed reasonable time to develop interim standards. EPA and the parties to the proceeding agreed to take several actions, and the Court concurred on them. First, we agreed to issue a one-year extension to the compliance date of September 30, 2002 promulgated in the September 30, 1999 rule. On December 6, 2001 (66 FR 63313), we published a final rule which extended the compliance date to September 30, 2003. Second, we committed to publish an interim rule with revised emission standards and to finalize several compliance and implementation amendments to the rule. These interim standards and compliance and implementation amendments were promulgated on February 13 and 14, 2002 (67 FR 6792 and 67 FR 6968). The interim standards replace the vacated standards, until we finalize final replacement standards that comply with the Court's mandate. Finally, we agreed to issue the final replacement standards by June 14, 2005. EPA also issued three technical correction notices to the rule since the last ICR was approved. They were published at 65 FR 42292 (July 10, 2000), 65 FR 67268 (November 9, 2000), and 66 FR 24270 (May 14, 2001). This ICR revision takes into account the changes to the paperwork burden related to all the above stated changes to the September 30, 1999 rule to-date, as well as to the changes in the hazardous waste combustor universe since the last ICR approval.

During the settlement negotiations, we have had several meetings with all the parties affected by the rule. We collected new information about the operations of the HWCs through these meetings. We also obtained newer test burn and trial burn reports from the EPA Regions and the States, which updated our earlier information on the regulated community. We then published a **Federal Register** notice of data availability (NODA) for these sources at 67 FR 44452 (July 2, 2002) inviting public comments on our updated database. In response, we received over 55 comments, many of which included detailed information about the operation of the HWCs and supplementary test reports. These comments are available for public viewing under Docket # RCRA–2002–0019 and were used in the preparation of this renewal ICR.

The information collection required under this ICR is mandatory for the regulated sources, as it is essential to properly enforce the emission limitation requirements of the rule and will be used to further the proper performance of the functions of EPA. EPA believes that if the minimum requirements specified under the regulations are not met, EPA will not fulfill its Congressional mandate to protect public health and the environment. EPA, however, has made extensive efforts to integrate the monitoring, compliance testing and recordkeeping requirements of the CAA and RCRA, so that the facilities are able to avoid the burden of

duplicate and unnecessary submissions. We also ensure, to the fullest extent by law, the confidentiality of the submitted to information. EPA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

C. *Burden Statement:* The current annual burden to the 171 respondents under this ICR is estimated at 68,269 hours, or an average of 399 hours per respondent. See ICR Numbers 1773.02 thru 1773.06 in the Docket No. RCRA–2002–0030 for details. 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: October 23, 2002.

Barnes Johnson,

Acting Director, Office of Solid Waste.

[FR Doc. 02–27621 Filed 10–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7401–8]

Request for Applications for Essential Use Exemptions to the Production and Import Phaseout of Ozone Depleting Substances Under the Montreal Protocol for the Years 2004 and 2005

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Through this action, the Environmental Protection Agency (EPA) is requesting applications for essential use allowances for calendar years 2004 and 2005. Essential-use allowances provide exemptions to the production and import phaseout of ozone-depleting substances and must be authorized by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. The U.S. government will use the applications received in response to this notice as the basis for its nomination of essential use allowances at the Fifteenth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (the Protocol), to be held in 2003.

DATES: Applications for essential use exemptions must be submitted to EPA no later than November 29, 2002, in order for the United States (U.S.) Government to complete its review and to submit nominations to the United Nations Environment Programme and the Protocol Parties in a timely manner.

ADDRESSES: Send two copies of application materials to: Scott Monroe, Global Programs Division (6205J), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. (For applications sent via courier service, use the following direct mailing address: 501 3rd Street, NW., Washington, DC 20001.) Send one copy of non-confidential application materials to: Air Docket A–93–39, EPA Docket Center (EPA/DC), EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

CONFIDENTIALITY: Application materials that are sent to the Air Docket should not contain confidential or proprietary information. Such confidential information should be submitted under separate cover and be clearly identified as ''trade secret,'' ''proprietary,'' or ''company confidential.'' Information covered by a claim of business confidentiality will be disclosed only to authorized government personnel. If no claim of confidentiality accompanies the information when it is received by EPA, the information may be made available to the public by EPA without further notice to the company (40 CFR 2.203).

FOR FURTHER INFORMATION CONTACT: Scott Monroe at the above address, or by telephone at (202) 564–9712, by fax at (202) 565–2155, or by email at *monroe.scott@epa.gov.* General information may be obtained from EPA's stratospheric protection Web site at *http://www.epa.gov/ozone.*

SUPPLEMENTARY INFORMATION:

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I. Background—The Essential Use Nomination Process.
II. Information Required for Essential Use Applications for Production or Importation of Class I Substances in 2004 and 2005.
III. Information to Assess the Need for Potential Campaign Production for the Years Beyond 2005.

I. Background—The Essential Use Nomination Process

As described in previous **Federal Register** (FR) documents,[1] the Parties to the Protocol agreed during the Fourth Meeting in Copenhagen on November 23–25, 1992, to accelerate the phase-out schedules for Class I ozone-depleting substances. Specifically, the Parties agreed that non-Article 5 Parties (developed countries) would phase out the production and consumption of halons by January 1, 1994, and the production and consumption of other class I substances (under 40 CFR part 82, subpart A), except methyl bromide, by January 1, 1996. The Parties also reached decisions and adopted resolutions on a variety of other matters, including the criteria to be used for allowing ''essential use'' exemptions from the phaseout of production and importation of controlled substances. Decision IV/25 of the Fourth Meeting of the Parties details the specific criteria and review process for granting essential use exemptions.

Decision IV/25 states that ''* * * a use of a controlled substance should qualify as ''essential'' only if: (i) it is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and (ii) there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health.'' In addition, the Parties agreed ''that production and consumption, if any, of a controlled substance, for essential uses should be permitted only if: (i) all economically feasible steps have been taken to minimize the essential use and any associated emission of the controlled substance; and (ii) the controlled substance is not available in sufficient quantity and quality from the existing stocks of banked or recycled controlled substances * * *.'' Decision XII/2 taken at the thirteenth meeting of the Parties states that any CFC metered dose inhaler (MDI) product approved after December 31, 2000, is non-essential unless the product meets the criteria in Decision IV/25 paragraph 1(a).

The first step in obtaining essential use allowances is for the user to consider whether the use of the controlled substance meets the criteria of Decision IV/25. If the essential use request is for an MDI product, that

[1] 58 *FR* 29410, May 20, 1993; 59 *FR* 52544, October 18, 1994; 60 *FR* 54349, October 23, 1995; 61 *FR* 51110, 0 30, 1996, 62 *FR* 51655, October 2, 1997; 63 *FR* 42629, August 10, 1998; 64 *FR* 50083, September 15, 1999; 65 *FR* 65377, November 1, 2000; and 200166 *FR* 56102, November 6, 2001.

product must also meet the criteria of Decision XII/2. The user should then send a completed application in order to notify EPA of the candidate use and provide information for U.S. government agencies and the Protocol Parties to evaluate that use according to the criteria under the Protocol.

Upon receipt of the essential use exemption application, EPA reviews the information provided and works with other interested Federal agencies to determine whether it meets the essential use criteria and warrants being nominated by the United States for an exemption. In the case of multiple exemption requests for a single use such as for MDIs, EPA aggregates exemption requests received from individual entities into a single U.S. request. An important part of the EPA review of requests for CFCs for MDIs is to determine that the aggregate request for a particular future year adequately reflects the total market need for CFC MDIs and expected availability of CFC substitutes by that point in time. If the sum of individual requests does not account for such factors, the U.S. government may adjust the aggregate request to better reflect true market needs.

Nominations submitted by the United States and other Parties are forwarded from the United Nations Ozone Secretariat to the Montreal Protocol's Technical and Economic Assessment Panel (TEAP) and its Technical Options Committees (TOCs), which review the submissions and make recommendations to the Protocol Parties for essential use exemptions. Those recommendations are then considered by the Parties at their annual meeting for final decision. If the Parties declare a specified use of a controlled substance as essential, and issue the necessary exemption from the production and consumption phaseout, EPA may propose regulatory changes to reflect the decisions by the Parties, but only to the extent such action is consistent with the Clean Air Act (CAA or Act). Applicants should be aware that essential use exemptions granted to the United States for the year 2003 under the Protocol were limited to chlorofluorocarbons (CFCs) for metered dose inhalers (MDIs) to treat asthma and chronic obstructive pulmonary disease, and methyl chloroform for use in manufacturing solid rocket motors.

The timing of this process is such that in any given year the Parties review nominations for essential use exemptions from the production and consumption phaseout intended for the following year and subsequent years. This means that, if nominated, applications submitted in response to today's notice for an exemption in 2004 and 2005 will be considered by the Parties in 2003 for final action.

The quantities of controlled ODSs that are requested in response to this notice, if approved by the Parties to the Montreal Protocol in 2003, will then be allocated as essential-use allowances (EUAs) to the specific U.S. companies through notice and comment rulemaking. EUAs for the year 2004 will be allocated to U.S. companies at the end of 2003, and EUAs for the year 2005 will be made at the end of 2004.

II. Information Required for Essential Use Applications for Production or Importation of Class I Substances in 2004 and 2005

Through this action, EPA requests applications for essential use exemptions for all class I substances, except methyl bromide, for calendar years 2004 and 2005. The Parties to the Montreal Protocol have approved 2,975 metric tons of CFCs for the year 2004; therefore, this notice is the last opportunity to submit new or revised applications for 2004. This notice is also the first opportunity to submit requests for 2005. Companies will have an opportunity to submit new, supplemental, or amended applications for 2005 next year. All requests for exemptions submitted to EPA must present information as prescribed in the current version of the TEAP ''Handbook on Essential Use Nominations'' (or ''handbook''), which was published in June 2001. The handbook is available electronically on the web at *http://www.teap.org,* or at *http://www.epa.gov/ozone.*

In brief, the TEAP Handbook states that applicants must present information on:

- Role of use in society;
- Alternatives to use;
- Steps to minimize use;
- Steps to minimize emissions;
- Recycling and stockpiling;
- Quantity of controlled substances requested; and
- Approval date and indications (for MDIs).

First, in order to obtain complete information from essential use applicants for CFC MDIs, EPA requires that parties (such as the International Pharmaceutical Aerosol Consortium) who request CFCs for multiple pharmaceutical companies make clear the amount of CFCs requested for each member company. Second, all essential use applications for CFCs must provide a breakdown of the quantity of CFCs necessary for each MDI product to be produced. This detailed breakdown of EUAs will allow EPA and the Food and Drug Administration to make informed decisions on the amount of CFC to be nominated by the U.S. Government for the years 2004 and 2005. Third, all new drug application (NDA) holders for CFC MDI products produced in the United States must submit a complete application for essential use allowances either on their own or in conjunction with their contract filler. In the case where a contract filler produces a portion of an NDA holder's CFC MDIs, the contract filler and the NDA holder must determine the total amount of CFCs necessary to produce the NDA holder's entire product line of CFC MDIs. The NDA holder must provide an estimate of how the CFCs would be split between the contract filler and the NDA holder in the allocation year. This estimate will be used only as a basis for determining the nomination amount, and may be adjusted prior to allocation of EUAs. Since the U.S. Government cannot forward incomplete or inadequate nominations to the Ozone Secretariat, it is important for applicants to provide all information requested in the Handbook, including the information specified in the supplemental research and development form (page 45).

The accounting framework matrix in the handbook entitled ''Table IV: Reporting Accounting Framework for Essential Uses Other Than Laboratory and Analytical'' requests data for the year 2002 on the amount of ODS exempted for an essential use, the amount acquired by production, the amount acquired by import, the amount on hand at the start of the year, the amount available for use in 2002, the amount used for the essential use, the quantity contained in exported products, the amount destroyed, and the amount on hand at the end of 2002. Because the data necessary to complete Table IV will not be available until after January 1, 2003, companies should not include this chart with their EUA applications in response to this action. EPA plans to send letters to each essential use applicant requesting the information in Table IV in the first two weeks of January 2003. Companies will have only fourteen days in which to respond since EPA must compile companies' responses to complete the U.S. CFC Accounting Framework for submission to the Parties to the Montreal Protocol by the end of January.

EPA anticipates that the Parties' review of MDI essential use requests will focus extensively on the United States' progress in developing alternatives to CFC MDIs, including education programs to inform patients

and health care providers of the CFC phaseout and the transition to alternatives. Accordingly, applicants are strongly advised to present detailed information on these points, including the scope and cost of such efforts and the medical and patient organizations involved in the work. Applicants should submit their exemption requests to EPA as noted in the Addresses section at the beginning of today's document.

III. Availability of Pharmaceutical Grade CFCs for the Year 2005 and Beyond

The plant that currently produces pharmaceutical grade CFCs for U.S. MDIs is scheduled to close at the end of 2005. As such, it is necessary for MDI manufacturers who wish to continue production after that time to identify a source of pharmaceutical grade CFC past this date. The Parties to the Protocol have identified two possible options. One is to qualify another plant to continue to produce pharmaceutical grade CFCs on a just-in-time basis. A second option is to request that CFCs be produced from the existing plant in a ''final campaign'' production of CFC to be produced in 2005. The CFCs produced in a final campaign could, in theory, then supply the remainder of the transition to CFC-free MDIs. It is important to note that this second option is under consideration but has not yet been approved by the Parties.

In order for EPA to plan effectively for the future of the essential use process, and in order for the U.S. Government to be fully informed, EPA must gather information about how MDI manufacturers intend to procure CFCs after 2005. Therefore, we request that all essential use applicants for MDIs answer the following two questions as completely as possible.

1. What steps has your company taken to ensure a continued supply of CFCs beyond 2005? Please be specific and explain whether there are plans to qualify a plant to produce pharmaceutical grade CFCs. Please identify the chemical company, the location of the plant, and the date the new plant is expected to begin production.

2. Does your company wish to make an essential use request for final campaign production of pharmaceutical grade CFCs for the year 2005 and beyond? If yes, how much CFCs does your company anticipate requesting?

The answers you provide will be considered confidential business information, and will only be shared with authorized government officials. While we are requesting information related to the possibility of campaign production of CFCs for MDIs in 2005, we are not requesting that companies make an official nomination for campaign production in 2005. If it is determined that campaign production is necessary and allowed under the Montreal Protocol, EPA will issue a separate notice requesting nominations for campaign production.

Dated: October 22, 2002.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 02–27623 Filed 10–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7402–1]

Environmental Laboratory Advisory Board (ELAB) Meeting Date, and Agenda

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of teleconference meeting.

SUMMARY: The Environmental Protection Agency's Environmental Laboratory Advisory Board (ELAB) will have a teleconference meeting on December 18, 2002, at 11:00 AM EDT to discuss the ideas, comments, and suggestions presented at the November 21, 2002, ELAB Meeting and Open Forum. Items to be discussed include: (1) Opinions and comments made at the New Mexico ELAB meetings, (2) restructuring of the National Environmental Laboratory Accreditation Conference (NELAC), (3) discussion on future ELAB recommendations to EPA, and (4) recommendations for increasing the number of States that are Accrediting Authorities. ELAB is soliciting input from the public on these and other issues related to the National Environmental Laboratory Accreditation Program (NELAP) and the NELAC standards. Written comments on NELAP laboratory accreditation and the NELAC standards are encouraged and should be sent to Mr. Edward Kantor, DFO, US EPA, P.O. Box 93478, Las Vegas NV 89193–3478, or faxed to (702) 798–2261, or emailed to *kantor.edward@epa.gov.* Members of the public are invited to listen to the teleconference calls and, time permitting, will be allowed to comment on issues discussed during this and previous ELAB meetings. Those persons interested in attending should call Edward Kantor at 702–798–2690 to obtain teleconference information. The number of lines are limited and will be distributed on a first come, first served basis. Preference will be given to a group wishing to attend over a request from an individual.

Dated: October 23, 2002.

John G. Lyon,

Director, Environmental Sciences Division, National Environmental Research Laboratory.

[FR Doc. 02–27624 Filed 10–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0255; FRL–7275–1]

Oxyfluorfen; Availability of Reregistration Eligibility Decision Document for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces availability and starts a 60–day public comment period on the Reregistration Eligibility Decision (RED) document for the pesticide active ingredient oxyfluorfen. The RED represents EPA's formal regulatory assessment of the health and environmental data base of the subject chemical and presents the Agency's determination regarding which pesticidal uses are eligible for reregistration.

DATES: Comments, identified by docket ID number OPP–2002–0255, must be received on or before December 30, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Patrick Dobak, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8180; e-mail address: dobak.pat@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 persons who are or may be required to conduct testing of chemical substances under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or the Federal Food, Drug, and Cosmetic Act (FFDCA); environmental, human health, and

agricultural advocates; pesticides users; and members of the public interested in the use of pesticides. 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 Copies of This Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2002–0255. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall # 2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/. To access RED documents and RED fact sheets electronically, go directly to the REDs table on the EPA Office of Pesticide Programs Home Page, at http://www.epa.gov/pesticides/reregistration/status.htm.

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

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket, but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2002–0255. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID number OPP–2002–0255. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic

submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Attention: Docket ID number OPP–2002–0255.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2002–0255. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action Is the Agency Taking?

The Agency has issued a RED for the pesticide active ingredient listed in this document. Under FIFRA, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of the chemical listed in this document is substantially complete, and the pesticide's risks have been mitigated so that it will not pose unreasonable risks to people or the environment when used according to its approved labeling. In addition, EPA is reevaluating existing pesticides and reassessing tolerances under the Food Quality Protection Act (FQPA) of 1996. The pesticides included in this notice also have been found to meet the FQPA safety standard.

All registrants of pesticide products containing the active ingredient listed in this document have been sent the appropriate RED, and must respond to labeling requirements and product specific data requirements (if applicable) within 8 months of receipt. Products also containing other pesticide active ingredients will not be reregistered until those other active ingredients are determined to be eligible for reregistration.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing this RED as a final document with a 60–day comment period. Although the 60–day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be considered by the Agency. If any comment significantly affects the RED, EPA will amend the RED by publishing the amendment in the **Federal Register**.

B. What Is the Agency's Authority for Taking This Action?

The legal authority for these REDs falls under FIFRA, as amended in 1988 and 1996. Section 4(g)(2)(A) of FIFRA directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products, and either reregistering products or taking ''other appropriate regulatory action.''

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: October 24, 2002.

Betty Shackleford,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–27626 Filed 10–29–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7402–2]

Health Assessment of 1,3-Butadiene

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability.

SUMMARY: This notice announces the availability of a final report titled, Health Assessment of 1,3-Butadiene (EPA/600/P–98/001F), which was prepared by the U.S. Environmental Protection Agency's (EPA) National Center for Environmental Assessment (NCEA) of the Office of Research and Development (ORD).

DATES: This document will be available on or about October 30, 2002.

ADDRESSES: The document will be made available electronically through the NCEA Web site (*http://www.epa.gov/ncea*). A limited number of paper copies will be available from the EPA's National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242; telephone: 1–800–490–9198 or 513–489–8190; facsimile: 513–489–8695. Please provide your name, your mailing address, the title and the EPA number of the requested publication.

FOR FURTHER INFORMATION CONTACT: The Technical Information Staff, National Center for Environmental Assessment/ Washington Office (8623D), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: 202–564–3261; fax: 202–565–0050; e-mail: *nceadc.comment@epa.gov.*

SUPPLEMENTARY INFORMATION: This assessment was conducted to review the new information that has become available since EPA's 1985 health assessment of 1,3-butadiene.

1,3-Butadiene is a gas used commercially in the production of styrene-butadiene rubber, plastics, and thermoplastic resins. The major environmental source of 1,3-butadiene is the incomplete combustion of fuels from mobile sources (*e.g.*, automobile exhaust). Tobacco smoke can be a significant source of 1,3-butadiene in indoor air.

This assessment concludes that 1,3-butadiene is carcinogenic to humans by inhalation, based on the total weight of evidence. The specific mechanisms of 1,3-butadiene-induced carcinogenesis are unknown, however, it is virtually certain that the carcinogenic effects are mediated by genotoxic metabolites of 1,3-butadiene.

Animal data suggest that females may be more sensitive than males for cancer effects; nevertheless, there are insufficient data from which to draw any conclusions on potentially sensitive subpopulations.

The human incremental lifetime unit cancer (incidence) risk estimate is based on extrapolation from leukemias observed in an occupational epidemiologic study. A twofold adjustment to the epidemiologic-based unit cancer risk is then applied to reflect evidence from the rodent bioassays suggesting that the epidemiologic-based estimate may underestimate total cancer risk from 1,3-butadiene exposure in the general population.

1,3-Butadiene also causes a variety of reproductive and developmental effects in mice; no human data on these effects are available. The most sensitive effect was ovarian atrophy observed in a lifetime bioassay of female mice. Based on this critical effect and using the benchmark concentration methodology, an RfC (*i.e.*, a chronic exposure level presumed to be ''without appreciable risk'' for noncancer effects) was calculated.

Dated: October 23, 2002.

Paul Gilman,

Assistant Administrator, Office of Research and Development.

[FR Doc. 02–27625 Filed 10–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7402–4]

Clean Water Act—Notice of Issuance and Opportunity for Public Comment on an Administrative Complaint Filed by the Environmental Protection Agency, Region IX

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Notice.

SUMMARY: On September 25, 2002, the U.S. Environmental Protection Agency, Region IX issued an Administrative Complaint: *In the Matter of Bruce Birch and Future Mountain Development Trust, 3808 Rosecrans Street, #281, San Diego, California 92110*. This Complaint proposes to issue a Final Order to Bruce Birch and Future Mountain Development Trust pursuant to section 309(g) of the Clean Water Act, 33 U.S.C. 1319(g), assessing a civil penalty of up to $137,500 for violations of the Clean Water Act.

The Complaint alleges that Bruce Birch and Future Mountain Development Trust violated the Clean Water Act by authorizing the discharge of dredge and fill material into a federally regulated water course, the San Luis Rey River in San Diego County, on numerous days in 1998 and 1999 without a Clean Water Act section 404 permit issued by the U.S. Army Corps of Engineers.

The U.S. Environmental Protection Agency is required by Clean Water Act section 309(g)(4)(A), 33 U.S.C. 1319(g)(4)(A), to provide public notice of and reasonable opportunity to comment on the proposal to issue an Administrative Order before issuing the final Order.

Any person who comments on the proposal to issue a final Administrative Order shall be given notice of any hearing held in this matter. If a hearing is held, the commenter will be entitled to an opportunity to be heard and to present evidence. If no hearing is held, commenters may petition EPA to set aside any subsequent final Order and to hold a hearing. Commenters may also seek judicial review of the final Order pursuant to Clean Water Act section 309(g)(8), 33 U.S.C. 1319(g)(8).

DATES: Persons wishing to comment on the proposal to issue a final Administrative Order may do so by submitting written comments, postmarked no later than fifteen days from the date this Notice is published, to the address below.

ADDRESSES: U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the Administrative Complaint or further information on the matter should be directed to Marcela von Vacano at (415) 972–3905, or via mail at the above address, Mail Code ORC–2.

Catherine Kuhlman,

Acting Director, Water Division.

[FR Doc. 02–27618 Filed 10–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7402–5]

Clean Water Act—Notice of Issuance and Opportunity for Public Comment on an Administrative Complaint Filed by the Environmental Protection Agency, Region IX

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Notice.

SUMMARY: On September 25, 2002, the U.S. Environmental Protection Agency, Region IX issued an Administrative Complaint: *In the Matter of Al Julian, 29814 Margale Lane, Vista, California 92084.* This Complaint proposes to issue a Final Order to Al Julian pursuant to section 309(g) of the Clean Water Act, 33 U.S.C. 1319(g), assessing a civil penalty of up to $137,500 for violations of the Clean Water Act.

The Complaint alleges that Al Julian violated the Clean Water Act by discharging dredge and fill material into a federally regulated water course, the San Luis Rey River in San Diego County, on numerous days in 1998 and 1999 without a Clean Water Act section 404 permit issued by the U.S. Army Corps of Engineers. Furthermore, Mr. Julian violated section 308(a), 33 U.S.C. 1318(a), which authorizes EPA to require persons subject to the Act to furnish information, by failing to respond to EPA's request.

The U.S. Environmental Protection Agency is required by Clean Water Act section 309(g)(4)(A), 33 U.S.C. 1319(g)(4)(A), to provide public notice of and reasonable opportunity to comment on the proposal to issue an

Administrative Order before issuing the final Order.

Any person who comments on the proposal to issue a final Administrative Order shall be given notice of any hearing held in this matter. If a hearing is held, the commenter will be entitled to an opportunity to be heard and to present evidence. If no hearing is held, commenters may petition EPA to set aside any subsequent final Order and to hold a hearing. Commenters may also seek judicial review of the final Order pursuant to Clean Water Act section 309(g)(8), 33 U.S.C. 1319(g)(8).

DATES: Persons wishing to comment on the proposal to issue a final Administrative Order may do so by submitting written comments, postmarked no later than fifteen days from the date this Notice is published, to the address below.

ADDRESSES: U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the Administrative Complaint or further information on the matter should be directed to Marcela von Vacano at (415) 972–3905, or via mail at the above address, Mail Code ORC–2.

Catherine Kuhlman,

Acting Director, Water Division.

[FR Doc. 02–27620 Filed 10–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7402–3; CWA–HQ–2002–6001; EPCRA–HQ–2002–6001; CAA–HQ–2002–6001; RCRA–HQ–2002–6001]

Clean Water Act Class II: Proposed Administrative Settlement, Penalty Assessment and Opportunity To Comment Regarding NEXTEL Communications, Inc., et. al. and NII Holdings, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has entered into a consent agreement with NEXTEL Communications, Inc. and its subsidiaries, and NII Holdings, Inc., collectively referred to as ''NEXTEL'', to resolve violations of the Clean Water Act (''CWA''), the Clean Air Act (''CAA''), the Resource Conservation and Recovery Act (''RCRA''), and the Emergency Planning and Community Right-to-Know Act (''EPCRA'') and their implementing regulations.

The Administrator, as required by CWA section 311(b)(6)(C), 33 U.S.C. 1321(b)(6)(C), is hereby providing public notice of, and an opportunity for interested persons to comment on, this consent agreement and proposed final order. EPA is also providing public notice of, and opportunity for interested parties to comment on, the CAA, RCRA, and EPCRA portions of this consent agreement.

NEXTEL failed to prepare Spill Prevention Control and Countermeasure (''SPCC'') plans for forty-eight facilities where they stored diesel oil in above ground tanks. EPA, as authorized by CWA section 311(b)(6), 33 U.S.C. 1321(b)(6), has assessed a civil penalty for these violations.

NEXTEL failed to obtain the appropriate operating permits or exemptions at eight facilities in violation of CAA section 110, 42 U.S.C. 7410, and various state implementation plan (''SIP'') requirements for emergency generators. EPA, as authorized by CAA section 113(d)(1), 42 U.S.C. 7413(d)(1), has assessed a civil penalty for these violations.

NEXTEL failed to file an emergency planning notification with the State Emergency Response Commission (''SERC'') and to provide the name of an emergency contact to the Local Emergency Planning Committee (''LEPC''). NEXTEL failed to submit Material Safety Data Sheets (''MSDS'') or a list of chemicals to the LEPC, the SERC, and the fire department with jurisdiction over each facility for seventy-five facilities in violation of EPCRA section 311, 42 U.S.C. 11021. At sixty-six facilities, NEXTEL failed to submit an Emergency and Hazardous Chemical Inventory form to the LEPC, the SERC, and the fire department with jurisdiction over each facility in violation of EPCRA section 312, 42 U.S.C. 11022. EPA, as authorized by EPCRA section 325, 42 U.S.C. 11045, has assessed a civil penalty for these violations.

NEXTEL failed to make a hazardous waste determination and improperly disposed of hazardous waste at one facility in violation of 9 VAC 20–60–261(A), [40 CFR 261.5(g)(1) and (g)(3)]. NEXTEL violated RCRA section 9003(d), 42 U.S.C. 6991b(d) when the insurance policy for underground storage tanks failed to use the terms ''corrective action'' or ''sudden, non-sudden or accidental release'' to describe coverage for four facilities. At one facility NEXTEL failed to notify the State or local agency or department of the existence of an underground storage tank in violation of RCRA section 9002(a), 42 U.S.C. 6991(a)(1). NEXTEL failed to follow all of the relevant underground storage tank regulations in violation of RCRA section 9003, 42 U.S.C. 6991b at one facility.

DATES: Comments are due on or before November 29, 2002.

ADDRESSES: Send written comments to the Docket Office, Enforcement and Compliance Docket and Information Center (2201T), Docket Number EC–2002–021, U.S. Environmental Protection Agency, EPA West, 1200 Pennsylvania Avenue NW., Room B133, Washington, DC 20460 (in triplicate if possible.)

Please use a font size no smaller than 12. Comments may also be sent electronically to *docket.oeca@epa.gov* or faxed to (202) 566–1511. Attach electronic comments as a text file and try to avoid the use of special characters and any forms of encryption. Please be sure to include the Docket Number EC–2002–021 on your document.

In person, deliver comments to U.S. Environmental Protection Agency, EPA West, 1301 Constitution Avenue, NW., Room B133, Washington, DC 20460. Parties interested in reviewing docket information may do so by calling (202) 566–1512 or (202) 566–1513. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Beth Cavalier, Multimedia Enforcement Division (2248–A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–3271; fax: (202) 564–9001; e-mail: *cavalier.beth@epa.gov*.

SUPPLEMENTARY INFORMATION: Electronic Copies: Electronic copies of this document are available from the EPA Home Page under the link ''Laws and Regulations'' at the **Federal Register**—Environmental Documents entry *(http://www.epa.gov/fedrgstr).*

I. Background

NEXTEL Communications, Inc., its subsidiaries, and NII Holdings, Inc. are telecommunications companies incorporated in the States of Delaware, Georgia, and Texas. NEXTEL is located at 2001 Edmond Halley Drive, Reston, Virginia, 20191 and NII Holdings, Inc. is located at 10700 Parkridge Boulevard, Suite 600, Reston, Virginia, 20191. NEXTEL disclosed, pursuant to the EPA ''Incentives for Self-Policing: Discovery, Disclosures, Correction and Prevention of Violations'' (''Audit Policy''), 65 FR 19618 (April 11, 2000), that they failed to prepare SPCC plans for forty-eight facilities where they stored diesel oil in above ground storage tanks, in violation of the CWA section 311(b)(3) and 40

CFR part 112. NEXTEL disclosed that for eight facilities they had failed to obtain operating permits or exemptions in violation of CAA section 110, 42 U.S.C. 7410, and various SIP requirements for emergency generators. Nextel disclosed that at seventy-two facilities they had failed to file emergency planning notifications with the SERC and failed to provide the name of an emergency contact to the LEPC, in violation of EPCRA sections 302 and 393, 42 U.S.C. 7413(a)(1). Nextel further disclosed that at seventy-five facilities they had failed to submit MSDS' or a list of chemicals to the LEPC, SERC, and the fire departments with jurisdiction over the facilities, in violation of EPCRA section 311, 42 U.S.C. 11021; and that at sixty-six facilities had failed to submit an Emergency and Hazardous Chemical Inventory for the LEPC, SERC, and fire departments with jurisdiction over the facilities, in violation of EPCRA section 312, 42 U.S.C. 11022. At four facilities Nextel failed to ensure that the language in their financial assurance insurance policies for underground storage tanks was not exactly as required by regulation, in violation of RCRA section 9003(d), 42 U.S.C. 6991(d). Nextel violated RCRA section 9002(a)(1), 42 U.S.C. 6991(a)(1) when it failed to notify the state of the existence of an underground storage tank at one facility; and Nextel violated RCRA section 9003, 42 U.S.C. 6991b and all of the relevant underground storage tank regulations at one facility. Nextel failed to make a hazardous waste determination and improperly disposed of hazardous waste at one facility in violation of 9–VAC 20–60–261(A).

EPA determined that Nextel met the criteria set out in the Audit Policy for a 100% waiver of the gravity component of the penalty. As a result, EPA waived the gravity based penalty ($1,994,810) and proposed a settlement penalty amount of thirty-five thousand and four dollars ($35,004). This is the amount of the economic benefit gained by Nextel, attributable to their delayed compliance with the CWA, CAA, RCRA, and EPCRA regulations. Nextel Communications, Inc. has agreed to pay this amount. EPA and Nextel negotiated and signed an administrative consent agreement, following the Consolidated Rules of Practice, 40 CFR 22.13(b), on October 18, 2002 (*In Re: Nextel Communications, Inc et. al. and NII Holdings, Inc.,* Docket Nos. CWA–HQ–2002–6001, EPCRA–HQ–2002–6001, CAA–HQ–2002–6001, and RCRA–HQ–2002–6001). This consent agreement is subject to public notice and comment under CWA section 311(b)(6), 33 U.S.C. 1321(b)(6). EPA is expanding this opportunity for public comment to all other aspects of this consent agreement.

Under CWA section 311(b)(6)(A), 33 U.S.C. 1321 (b)(6)(A), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of the CWA section 311(b)(3), 33 U.S.C. 1321 (b)(3), or who fails or refuses to comply with any regulations that have been issued under CWA section 311(j), 33 U.S.C. 1321(j), may be assessed an administrative civil penalty of up to $137,500 by EPA. Class II proceedings under CWA section 311(b)(6) are conducted in accordance with 40 CFR part 22.

Under CAA section 113(d), the Administrator may issue an administrative order assessing a civil penalty against any person who has violated an applicable implementation plan or any other requirement of the Act, including any rule, order, waiver, permit or plan. Proceedings under CAA section 113(d) are conducted in accordance with 40 CFR part 22.

Under EPCRA section 325, the Administrator may issue an administrative order assessing a civil penalty against any person who has violated applicable emergency planning or right to know requirements, or any other requirement of the Act. Proceedings under EPCRA section 325 are conducted in accordance with 40 CFR part 22.

Under RCRA section 3008, the Administrator may issue an administrative order assessing a civil penalty against any person who has violated applicable underground storage tank or hazardous waste requirements, or any other requirement of the Act. Proceedings under RCRA section 3008 are conducted in accordance with 40 CFR part 22.

The procedures by which the public may comment on a proposed Class II penalty order, or participate in a Clean Water Act Class II penalty proceeding, are set forth in 40 CFR 22.45. The deadline for submitting public comment on this proposed final order is November 29, 2002. All comments will be transferred to the Environmental Appeals Board (''EAB'') of EPA for consideration. The powers and duties of the EAB are outlined in 40 CFR 22.4(a).

Pursuant to CWA section 311(b)(6)(C), EPA will not issue an order in this proceeding prior to the close of the public comment period.

List of Subjects

Environmental protection.

Dated: October 24, 2002.

Rosemarie A. Kelley,

Acting Director, Multimedia Enforcement Division, Office of Enforcement and Compliance Assurance.

[FR Doc. 02–27622 Filed 10–29–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

October 22, 2002.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13. 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. For further information contact Paul J. Laurenzano, Federal Communications Commission, (202) 418–1359 or via the Internet at *plaurenz@fcc.gov.*

OMB Control No.: 3060–0989.

Expiration Date: 11/30/2002.

Title: Procedures for Applicants Requiring Section 214 Authorization for Domestic Interstate Transmission Lines Acquired Through Corporate Control, 47 CFR Sections 63.01, 63.03, and 63.04.

Form No.: N/A.

Estimated Annual Burden: 35 responses; 1,655 total annual hours; 3–65 hours per respondent.

Needs and Uses: The Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations Report and Order released March 21, 2002, provides presumptive streamlining categories, allows for joint applications for international and domestic transfers of control, clarifies confusion about content of applications, provides timelines for streamlined transaction review, provides a pro forma transaction process, allows asset acquisitions to be treated as transfers of control and deletes obsolete sections of the Commission's rules. The information will be used to ensure that applicants comply with the requirements of 47 U.S.C. section 214.

OMB Control No.: 3060–0793.

Expiration Date: 10/31/2005.

Title: Federal-State Joint Board on Universal Service, CC Docket No. 96–45, Procedures for Self-Certifying as a Rural Carrier.

Form No.: N/A.

Estimated Annual Burden: 10 responses; 10 total annual hours; 1 hour per response.

Needs and Uses: In the Universal Service Order, the Commission determined that rural and non-rural carriers will receive federal universal service support determined by separate mechanisms, at least until January 1, 2001. The Commission stated that it would define rural carriers as those carriers that meet the statutory definition of a rural telephone company in section 153(37) of the Communications Act. In addition, the Commission determined that local exchange carriers (LECs) should self-certify their status as a rural company each year to the Commission and their state commission.

In a Tenth Report and Order (Report and Order) issued on November 2, 1999, the Commission adopted the proposals made that carriers who serve under 100,000 access lines should not have to file the annual rural certification letter unless their status has changed since their last filing. Carriers with more than 100,000 access lines, that seek rural status, need to file rural certifications for their year 2001 status and thereafter, should re-certify only if their status has changed. The Commission found that the relaxed re-certification requirements will reduce administrative burdens for carriers seeking rural certification and for the Commission. Statutory authority for this information collection is section 254 of the Telecommunications Act.

OMB Control No.: 3060–0742.

Expiration Date: 08/31/2005.

Title: Telephone Number Portability (47 CFR part 52, subpart C, Sections 52.21–52.33) and CC docket no. 95–116.

Form No.: N/A.

Estimated Annual Burden: 1,925 responses; 13,613 total annual hours; $77,000 cost burden; .50—149 hours per response.

Needs and Uses: 47 CFR part 52, subpart C implements the statutory requirement that LECs provide number probability. In a MO&O on reconsideration, issued in CC docket no. 95–116, the Commission implements new and/or modified requirements. (1) In order to calculate a multi-region carrier's share of LNP administration costs, the agency needs a certification if that carrier cannot divide its revenue by LNP region and instead chooses to allocate such revenue by subscriber percentages. (2) To ensure that a non-LNP capable incumbent local exchange carrier participating in an extended area service calling plan with an LNP-capable carrier complies with LNP cost recovery law and rules, the agency needs the collection by tariff if such a carrier seeks to recover its query and LNP administration costs.

OMB Control No.: 3060–0540.

Expiration Date: 09/30/2005.

Title: Tariff Filing Requirements for Nondominant Common Carriers.

Form No.: N/A.

Estimated Annual Burden: 2,000 responses; 21,000 total annual burden; $1,260,000 cost burden; 10.5 hours per response.

Needs and Uses: Nondominant carriers must file tariffs pursuant to the requirements contained in 47 CFR sections 61.20–61.23. These tariff filing rules for nondominant carriers were originally adopted to comply with the decision of the United States Court of Appeals for the District of Columbia Circuit, which required all nondominant carriers to file tariffs with the Commission. *See AT&T* v. *FCC,* 978 F.2d 727 (D.C. Cir. 1992). *See also Southwestern Bell Corp.* v. *FCC,* 43 F.3d 1515 (D.C. Cir. 1995).

The information collected pursuant to the nondominant tariff filing rules is used to comply with section 203 of the Communications Act of 1934, which requires that carriers file schedules indicating the rates, terms, and conditions of their service offerings. The information collected pursuant to the tariff filing requirements is used by the Commission to determine whether the rates, terms, and conditions of service offered are just and reasonable as the Act requires. These tariff filing requirements enable the Commission and the public to ensure that the service offerings of communications common carriers comply with the requirements of the Act. If the information were not filed, the Commission would not be able to carry out its responsibilities as required by the Act.

OMB Control No.: 3060–0463.

Expiration Date: 09/30/2005.

Title: Telecommunications Services for Individuals with Hearing and Speech Disabilities and the Americans with Disabilities Act of 1990, 47 CFR Part 64 (Sections 64.601–64.605).

Form No.: N/A.

Estimated Annual Burden: 5,052 responses; 26,831 total annual hours; 6 hours per response.

Needs and Uses: The Americans with Disabilities Act of 1990 (ADA), Pub. L. 101–336, 104 Stat. 327, 366–69, was enacted on July 26, 1990. The purpose of the ADA is to provide a clear and comprehensive national mandate to end discrimination against individuals with disabilities and to bring persons with disabilities into the economic and social mainstream of American life; to provide enforceable standards addressing discrimination against individuals with disabilities; and to ensure that the Federal government play a central role in enforcing these standards on behalf of individuals with disabilities. Title IV of the ADA adds section 225 to the Communications Act of 1934. Section 225 requires the Commission to promulgate regulations that require all domestic telephone common carriers to provide telecommunications relay services (TRS). 47 CFR part 64, subpart F implements certain provisions of the ADA. It contains the operational, technical, and functional standards required of all TRS providers and the procedures for state certification. Although section 225 of the ADA imposes on all common carriers providing interstate or intrastate telephone services an obligation to provide to hearing and speech-impaired individuals telecommunications services that enable them to communicate with hearing individuals, and charges the Commission with regulatory oversight, states may seek to establish intrastate relay services that satisfy federal requirements. Pursuant to section 64.602, any violation of subpart F by any common carrier engaged in intrastate communications will be subject to the same remedies, penalties, and procedures as are applicable to a violation of the Communications Act by a common carrier engaged in interstate communications.

OMB Control No.: 3060–0169.

Expiration Date: 06/30/2005.

Title: Sections 43.51 and 43.53—Reports and Records of Communications Common Carriers and Affiliates.

Form No.: N/A.

Estimated Annual Burden: 374 responses; 6,029 total annual hours; 83–101 hours per response.

Needs and Uses: Sections 211 and 215 of the Communications Act of 1934, as amended, 47 U.S.C. sections 211 and 215 require that the FCC examine transactions of any common carriers relating to the activities of that carrier which may affect the charges and/or services rendered under the Act. The reports required by sections 43.51 and 43.53 are the means by which the FCC gathers information concerning the activities of carriers which it examines. *See* 43.51 also requires carriers to maintain copies of certain contracts, to have them readily accessible to Commission staff and members of the public upon request and to forward individual contracts to the Commission as requested.

OMB Control No.: 3060–0687.

Expiration Date: 10/30/2005.

Title: Access to Telecommunications Equipment and Services by Persons with Disabilities, CC Docket No. 87–124.

Form No.: N/A.

Estimated Annual Burden: 1,268 responses; 25,000 total annual hours; $272,000 cost burden; 9.86 hours per response.

Needs and Uses: Title II of the Communications Act of 1934, as amended, 47 U.S.C. section 201 *et. al.,* provides the statutory authority for the Commission to promulgate the rules and regulations contained in part 68 of FCC Rules, 47 CFR part 68. Requirements in part 68 are necessary to prevent degradation of the telephone network. The following collections are necessary to inform consumers who purchase and/or use telephone equipment to determine whether the telephone is hearing aid compatible.

Pursuant to section 68.300(b), all registered telephone manufactured in the U.S. or imported for use in the U.S. that are hearing aid compatible must be stamped with the letters HAC. The provision applies to all telephones manufactured or imported as of March 1, 1997 for use in the United States. The provision excludes telephones used with public mobile services or private radio services, and secure telephones.

Section 68.112(b)(3) requires that employers with fifteen or more employees provide emergency telephones for use by employees with hearing disabilities, and that the employers ''designate'' such telephones for emergency use. The ''designation'' might be a sign or a written notice to employees, or some other means of designation. The type of designation is left up to the employer.

Section 68.224(a) requires a notice to be contained on the surface of the packaging of a non-hearing aid compatible telephone that the telephone contained therein is not hearing aid compatible, as defined in sections 68.4(a)(3) and 68.316, or if offered for sale without a surrounding package, shall be fixed with a written statement that the telephone is not hearing aid-compatible, as defined by sections 68.4(a)(3) and 68.316. Section 68.224(b) also requires that the telephone equipment be accompanied by instructions in accordance with § 68.218(b)(5) of the rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–27568 Filed 10–29–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

October 17, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 29, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0532.

Title: Scanning Receiver Compliance Exhibit, Section 2.1033 (b)(10) and Section 15.121.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; Not-for-profit institutions; Business or other for-profit entities; Federal Government; and State, Local or Tribal Government.

Number of Respondents: 40.

Estimated Time per Response: 1 hour.

Frequency of Response: Recordkeeping; On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 40 hours.

Total Estimated Cost: $2,000.

Needs and Uses: The FCC rules under 47 CFR 2.1033(b)(10) require manufacturers of scanning receivers to design their equipment so that: it has 38 dB of image rejection for Cellular Service frequencies, tuning, control, and filtering circuitry are inaccessible, and any attempt to modify the scanning receiver to receive Cellular Service transmissions will likely render the scanning receiver inoperable. The Commission also requires manufacturers to submit information with any application for certification that describes: the testing method used to determine compliance with the 38 dB image rejection ratio, the design features that prevent modification of the scanning receiver to receive Cellular Service transmissions, and the design steps taken to make tuning, control, and filtering circuitry inaccessible. Furthermore, the FCC requires equipment to carry a statement assessing the vulnerability of the scanning receiver to modification and to have a label affixed to the scanning receiver, similar to the following:

Warning: Modification of this device to receive cellular radiotelephone service signals is prohibited under FCC Rules and Federal Law.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 02–27567 Filed 10–29–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011831.

Title: Maersk Sealand/Wan Hai Lines Asia-U.S. West Coast Slot Charter Agreement.

Parties: A. P. Moller-Maersk Sealand, Wan Hai Lines Ltd.

Synopsis: The agreement authorizes Maersk Sealand to charter space to Wan Hai in the trades to and from ports of Los Angeles, Long Beach and Oakland, California, on the one hand, and the ports of Yantian, People's Republic of China, Hong Kong, S.A.R., and Kaohsiung, Taiwan, on the other. The parties request expedited review.

By Order of the Federal Maritime Commission.

Dated: October 25, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–27643 Filed 10–29–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 17803N.
Name: Advanced Global Logistics, LLC.
Address: 535 West 34th Street, New York, NY 10001.
Date Revoked: October 5, 2002.
Reason: Failed to maintain a valid bond.

License Number: 4210F.
Name: Air Cargo Expediters Inc.
Address: 167–17 146th Road, Jamaica, NY 11434.
Date Revoked: July 24, 2002.
Reason: Failed to maintain a valid bond.

License Number: 11988N.
Name: All World Services, Inc.
Address: 8348 NW 30th Terrace, Miami, FL 33122.
Date Revoked: April 22, 2002.
Reason: Failed to maintain a valid bond.

License Number: 4363NF.
Name: DGM Services, Inc. dba Dangerous Goods
Management & DG Express.
Address: 14335–C Interdrive West, Houston, TX 77032.
Date Revoked: August 14, 2002.
Reason: Failed to maintain valid bonds.

License Number: 17642N.
Name: Direct Shipping, Corp. dba Direct Shipping Line.
Address: 9550 Flair Drive, #503, El Monte, CA 91731.
Date Revoked: September 29, 2002.
Reason : Failed to maintain a valid bond.

License Number : 2022F.
Name : Embert Shipping, Inc.
Address : 437 Marmore Avenue, Coral Gables, FL 33146.
Date Revoked : October 23, 2002.
Reason : Surrendered license voluntarily.

License Number : 16321N.
Name : Express Consolidation Systems Corp.
Address : 253 Academy Street, Jersey City, NJ 07306.
Date Revoked : September 28, 2002.
Reason : Failed to maintain a valid bond.

License Number: 10956N.
Name: F.A.R. Freight Services, Inc. dba Principal Container Line.
Address: 215 Montgomery Street, 2nd Floor, Jersey City, NJ 07302.
Date Revoked: September 25, 2002.
Reason: Failed to maintain a valid bond.

License Number : 4235N.
Name : G.S.I. Cargo Systems Inc.
Address : 55 Inip Drive, Inwood, NY 11096.
Date Revoked : June 23, 2002.
Reason : Failed to maintain a valid bond.

License Number : 16698N and 16698F.
Name: Global Total Logistics, LLC.
Address: 18411 Crenshaw Blvd., Suite 210, Torrance, CA 90504.
Date Revoked: June 15, 2002 and August 15, 2002.
Reason: Failed to maintain valid bonds.

License Number: 9867N.
Name: Harro Schumacher dba Schumacher Cargo Lines.
Address: 12821 S. Spring Street, Los Angeles, CA 90061.
Date Revoked: September 29, 2002.
Reason: Failed to maintain a valid bond.

License Number: 17520N.
Name: MedTrans LLC.
Address: 1200 Townline Road, Mundelein, IL 60060.
Date Revoked: April 15, 2002.
Reason: Surrendered license voluntarily.

License Number: 1415F.
Name: Mayflower International, Inc.
Address: One Mayflower Drive, Fenton, MO 63026.
Date Revoked: August 23, 2002.
Reason: Failed to maintain a valid bond.

License Number: 3101F.
Name: Mr. Jong Gil Kim dba Ace Freight System.
Address: 2401 Utah Avenue South, Suite 200, Seattle, WA 98134.
Date Revoked: July 13, 2002.
Reason: Failed to maintain a valid bond.

License Number: 16641NF.
Name: PMG Containerline, Inc.
Address: 7454 Brokerage Drive, Orlando, FL 32809.
Date Revoked: October 5, 2002.
Reason: Failed to maintain valid bonds.

License Number: 4326NF.
Name: Samson Transport (USA) Inc.
Address: 100 Walnut Avenue, Suite 405, Clark, NJ 07066.
Date Revoked: July 11, 2001.
Reason: Surrendered license voluntarily.

License Number: 1294N and 1294F.
Name: U.S. Express, Inc.
Address: 137–44 94th Avenue, Jamaica, NY 11435.
Date Revoked: September 1, 2002 and September 8, 2002.
Reason: Failed to maintain valid bonds.

License Number: 17613N.
Name: Utopia Logistic New York, Inc.
Address: 149–35 177th Street, #104, Jamaica, NY 11434.
Date Revoked: September 26, 2002.
Reason: Failed to maintain a valid bond.

License Number: 17724N.
Name: Vankor Logistics Int'l (U.S.A.), Inc.
Address: 1031 W. Manchester Blvd., Unit D, Inglewood, CA 90301.
Date Revoked: October 16, 2002.
Reason: Surrendered license voluntarily.

License Number: 2629F.
Name: Y.S. International Inc.
Address: 11389 SW 85 Lane, Miami, FL 33173.
Date Revoked: September 24, 2002.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–27646 Filed 10–29–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the

Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Cargo Alliance, Inc., 436 S. Garfield Avenue, #8, Monterey Park, CA 91754, *Officers:* Li Chen, President, (Qualifying Individual), Linli Yang, Vice President.

D & R Trading and Shipping, Inc., 280 SW 99 Terrace, Pembroke Pines, FL 33025, *Officers:* Dawn Maria Pierce, President, (Qualifying Individual), Rory Pierce, Vice President.

Florida International Forwarders, Inc., 10302 NW South River Drive, Miami, FL 33178, *Officer:* Jose A. Caballero, President, (Qualifying Individual).

Kestrel Liner Agencies L.L.C. dba Kestrel Lines, South American Independent Line, 9505 NW 108th Avenue, Miami, FL 33178, *Officers:* Luanda D. Ventura, Corporate Secretary, (Qualifying Individual), Mark Pattison, President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

AMC USA AEREO Maritimo Cargo, Inc. dba AMC USA, 266 NW 44 Avenue, Miami, FL 33126–5336, *Officers:* Jesus Alberto Moncada A., Vice President, (Qualifying Individual), Carlos Moncada A., President.

Coastar Freight Services, Inc., 409 E. Diamond Street, #A, Arcadia, CA 91006, *Officer:* Weng Chai Ng, President, (Qualifying Individual).

Global Freight Management GFM, 3690 W. 2100 S., Salt Lake City, UT 84104, *Officers:* Faigata Tulau, Vice President, (Qualifying Individual), Emily M. Young, CEO.

Dated: October 25, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–27644 Filed 10–29–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

License No.	Name/address	Date reissued
17408F	Maraly International, Corp., 7206 NW 84th Avenue, Miami, FL 33166	July 7, 2002.
17413NF	Venture Transport, Inc., dba ASCO Freight Management, 314 North Post Oak Lane, Houston, TX 77024.	September 4, 2002.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–27645 Filed 10–29–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: *Background.*

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve 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.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Cindy Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829); OMB Desk Officer—Joseph Lackey—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Final approval under OMB delegated authority to revise, without extension, the following reports:

Report title: Financial Statements for Bank Holding Companies

Agency form number: FR Y–9C, FR Y–9LP, FR Y–9SP, and FR Y–9CS

OMB Control number: 7100–0128

Frequency: Quarterly and semiannually

Reporters: Bank holding companies (BHC's)

Annual reporting hours: 321,581 hours

Estimated average hours per response: FR Y–9C: 33.98 hours, FR Y–9LP: 4.55 hours, FR Y–9SP: 3.89 hours, FR Y–9CS: 30 minutes, FR Y–9ES: 30 minutes

Number of respondents: FR Y–9C: 1,859, FR Y–9LP: 2,193, FR Y–9SP: 3,566, FR Y–9CS: 600; FR Y–9ES: 100

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.

Abstract: The FR Y–9C consists of standardized consolidated financial statements similar to the Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No.7100–0036). The FR Y–9C is filed quarterly by top–tier BHC's that have total assets of $150 million or more and by lower–tier BHC's that have total consolidated assets of $1 billion or more. In addition, multibank holding companies with total consolidated assets of less than $150

million with debt outstanding to the general public or engaged in certain nonbank activities must file the FR Y–9C.

The FR Y–9LP includes standardized financial statements filed quarterly on a parent company only basis from each BHC that files the FR Y–9C. In addition, for tiered BHC's, a separate FR Y–9LP must be filed for each lower tier BHC.

The FR Y–9SP is a parent company only financial statement filed semiannually by one–bank holding companies with total consolidated assets of less than $150 million, and multibank holding companies with total consolidated assets of less than $150 million that meet certain other criteria. This report, an abbreviated version of the more extensive FR Y–9LP, is designed to obtain basic balance sheet and income statement information for the parent company, information on intangible assets, and information on intercompany transactions.

The FR Y–9CS is a free form supplement that may be utilized to collect any additional information deemed to be critical and needed in an expedited manner. It is intended to supplement the FR Y–9C and FR Y–9SP reports.

Current actions: On July 30, 2002, the Federal Reserve published a notice soliciting comments for 60 days on proposed revisions to the Financial Statements for Bank Holding Companies (67 FR 49356). The notice described the Federal Reserve proposal to implement the Financial Statements for Employee Stock Ownership Plan Bank Holding Companies (FR Y–9ES). The Federal Reserve Board has approved the implementation of the FR Y–9ES report effective for December 31, 2002. The FR Y–9ES will be filed annually by BHC's that are Employee Stock Ownership Plans (ESOP's) that currently submit either the FR Y–9LP or the FR Y–9SP. The FR Y–9ES will be collected as of December 31 and submitted to the Federal Reserve by July 31.

The Federal Reserve received comments from three financial institutions in response to the initial Federal Register notice. All three commenters were in favor of adopting the FR Y–9ES citing reduction in burden and the collection of data more representative of the activities of an ESOP. The Federal Reserve specifically sought comment on the proposed deadline for the FR Y–9ES. One response specifically addressed the proposed filing extension beyond the July 31 deadline for those institutions that have been granted extension for filing their IRS/DOL Form 5500. The comment strongly recommended that adoption of the extension stating that institutions may be forced to estimate the data to meet the July 31 deadline and amend the report once Form 5500 was filed. The Federal Reserve has decided to grant extensions for respondents that send a copy of their IRS Form 5558 to the appropriate Reserve Bank by July 31.

Board of Governors of the Federal Reserve System, October 23, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–27522 Filed 10–29–02; 8:45 am]

BILLING CODE 6210–01–S

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 November 12, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Nancy Louis Smith and Patrick Allen Brooks, both of Chickasha, Oklahoma; to acquire voting shares of First Independent Bancorp, Inc., Chickasha, Oklahoma, and thereby indirectly acquire voting shares of The First National Bank and Trust Company, Chickasha, Oklahoma, Chickasha, Oklahoma.

Board of Governors of the Federal Reserve System, October 23, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–27523 Filed 10–29–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 22, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Herky Hawk Financial Corp., Monticello, Iowa; to acquire 100 percent of the voting shares of Munter Agency, Inc., Strawberry Point, Iowa, and thereby indirectly acquire voting shares of Union Bank and Trust Company, Strawberry Point, Iowa.

Board of Governors of the Federal Reserve System, October 24, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–27525 Filed 10–29–02; 8:45 am]

BILLING CODE 6210–01–S

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System

TIME AND DATE: 12 p.m., Monday, November 4, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION PLEASE CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: October 25, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–27673 Filed 10–25–02; 4:27 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–08]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Racial and Ethnic Approaches to Community Health Information Network (REACH IN)-New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC)The REACH IN is a customized internet-based support system that will allow the Racial and Ethnic Approaches to Community Health 2010 (REACH 2010) Program grantees to perform remote data entry and retrieval of data on the grantees' actions, intervention activities, community/systems change, and change among change agents. This support system is also designed to create on-demand graphs and reports of the grantees' actions and accomplishments. There is no cost to respondents.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hours)	Total burden (in hours)
REACH 2010 Grantees	37	4	30/60	74
Total				74

Dated: October 24, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–27549 Filed 10–29–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–09]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road,

MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Outcome Evaluation of CDC's Youth Media Campaign: Follow up Survey to Baseline Data Collection—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background

In FY 2001, Congress established the Youth Media Campaign at the Centers for Disease Control and Prevention (CDC). Specifically, the House Appropriations Language said: ''The Committee believes that, if we are to have a positive impact on the future health of the American population, we must change the behaviors of our children and young adults by reaching them with important health messages.'' CDC, working in collaboration with federal partners, is coordinating an effort to plan, implement, and evaluate a campaign designed to clearly communicate messages that will help youth develop habits that foster good health over a lifetime. The Campaign is based on principles that have been shown to enhance success, including: designing messages based on research; testing messages with the intended audiences; involving young people in all aspects of Campaign planning and implementation; enlisting the involvement and support of parents and other influencers; refining the messages based on research; and measuring the effect of the campaign on the target audiences.

To measure the effect of the campaign on the target audiences, CDC designed a baseline survey for tween and parent dyads (Children's Youth Media Survey and Parents' Youth Media Survey) that assessed aspects of the knowledge, attitudes, beliefs, and levels of involvement in positive activities of tweens and a parent or guardian. The baseline survey was conducted prior to the launch of the campaign from April 8, 2002 through June 21, 2002. The methodology was to use a panel design and to survey 3000 dyads (3000 parents and 3000 tweens) from a nationally representative sample and to survey 3000 dyads (again 3000 parents and 3000 tweens) from the six ''high dose'' communities for a total of 6000 dyads or 12,000 respondents. The survey was conducted using random digit dial.

The next steps in the measurement of effects of the campaign is to collect follow-up data one year post baseline survey and two years post baseline survey. The same panel members (minus attrition) of 6000 tween/parent dyads used in the baseline survey—nationally and in the six selected metropolitan areas—would be re-contacted to complete a survey that would be similar to that used at baseline. Items on campaign awareness would be added to the survey to enable segmentation of the respondents by awareness of the campaign. Thus, the data collection would be with approximately 6000 tween/parent dyads in spring 2003 and 6000 tween/parent dyads in 2004. There is no cost to respondents.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/ response (in hours)	Total burden (in hours)
Tweens (9 to 13 year olds)	6000	2 (1st 2003) (2nd 2004)	15/60	3000
Parents	6000	2 (1st in 2003) (2nd in 2004)	15/60	3000
Total				6000

Dated: October 24, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–27550 Filed 10–29–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–07]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Intimate Partner Violence Screening: A Randomized Trial Comparing Computerized Questionnaires and Nursing Staff Interviews—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

The purpose of this project is to determine effective ways to screen for intimate partner violence (IPV) in clinical settings. The project will compare the sensitivity, specificity and cost of screening for intimate partner violence (IPV) through a randomized trial using two modes of administering the screening questionnaire. Modes to be compared are computer administration and face-to-face interviews by a nurse. Computerized screens will be of two different lengths. Three questions on the face-to-face interview will be identical to a short computer screen; a longer computer

screen will include those three items and will also ask additional questions. Thus, the evaluation can examine both mode of screening and content of screening questions. The screening modes will be assessed in a primary care clinic in Albany, New York.

IPV is associated with a variety of physical and psychological problems but despite the high prevalence of IPV among patients seen in primary care and prenatal care, it is infrequently detected and treated in primary care settings. Only one in three abused women has discussed the abuse with her physician. Disclosure of abuse has been found to be associated with direct physician screening, and female IPV victims report that they would be willing to discuss their abuse if asked by their physician. Computer questionnaires hold promise for IPV screening of primary care patients because: (1) There are low continuing costs after initial setup and (2) computer questionnaires have been found useful for obtaining sensitive risk factor information on other topics (*e.g.*, drug use, HIV risk factors).

The U.S. Preventive Services Task Force finds ''insufficient evidence to recommend for or against the use of specific screening instruments to detect family violence'' because of the absence of studies demonstrating that detection and treatment of IPV improves physical or psychological health, or decreases IPV. This study can provide needed evidence about the detection of IPV, which in turn, can be used in studies evaluating the effectiveness of screening followed by appropriate treatment. There is no cost to respondent.

Respondent	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hours)	Total burden (in hours)
Patients	300	2	16/60	160
Health Care Providers and Nurses	14	7	6.4/60	10
Health Care Admitting Staff	36	1	15/60	9
Total	350			179

Dated: October 23, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–27551 Filed 10–29–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02062]

Diabetes Program; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the award of fiscal year (FY) 2002 funds for the diabetes program. The purpose of the program is to reduce the disease and economic burden of diabetes, and improve the quality of life for all persons who have or are at risk for diabetes, through prevention programs. This program addresses the ''Healthy People 2010'' focus area Diabetes.

B. Eligible Applicants

Assistance is provided only to the organizations listed below. No other applications were solicited. Fiscal Year (FY) 2002 Federal Appropriation specifically directs CDC to award funds to these organizations.

1. Clinica Monsenor Oscar A. Romero in Los Angeles, California for a diabetes care program. ($98,899)

2. Oklahoma Center for the Advancement of Science and Technology in Oklahoma City, Oklahoma for a diabetes and diabetic retinopathy demonstration. ($247,247)

3. University of Arizona in Tuscon for a Border Health Initiative for a Border Health Initiative. ($435,154)

4. Center for Diabetes and Prevention Control at Texas Tech University Health Sciences Center to provide a national model of diabetes outreach, education, prevention, and care. ($493,941)

5. Dakota Plains Diabetes Center for the Standing Rock Sioux Tribe and Cheyenne Sioux Tribe. ($1,582,380)

6. Glaucoma Foundation for a Community Health glaucoma screening to develop a model project to test the efficacy of glaucoma screening using mobile units. ($2,613,445)

C. Funds

Approximately $5,471,066 is being awarded in FY 2002. 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 one year.

D. Where To Obtain Additional Information

Business management technical assistance may be obtained from: Angela Webb, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: 770–488–2784, e-mail: *aqw6@cdc.gov.*

For program technical assistance, contact: Dara Murphy, Division of Diabetes Translation, Centers for Disease Control and Prevention, 4770 Burford Highway, NE, MS K–57, Atlanta, GA 30341, Telephone: 770–488–5193, e-mail: *dlm1@cdc.gov.*

Dated: October 21, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–27554 Filed 10–29–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 18, 2002, from 1 p.m. to 3:30 p.m.

Location: Food and Drug Administration, Bldg 29B, conference room C, 29 Lincoln Dr., Bethesda, MD.

This meeting will be held by a telephone conference call. The public is welcome to attend the open portion of the meeting. A speaker phone will be provided at the specified location.

Contact Person: Jody G. Sachs or Denise H. Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301 827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12391. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will review and discuss the intramural research programs of the Laboratory of Enteric and Sexually Transmitted Diseases, Office of Vaccines Research and Review.

Procedure: On November 18, 2002, from 1 p.m. to 3 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 1, 2002. Oral presentations from the public will be scheduled between approximately 2 p.m. and 3 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 1, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On November 18, 2002, from 3 p.m. to 3:30 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Jody G. Sachs or Denise H. Royster at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 23, 2002.

LaJuana D. Caldwell,

Acting Senior Associate Commissioner for External Relations.

[FR Doc. 02–27574 Filed 10–29–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

National Evaluation of the Comprehensive Community Mental Health Services for Children and Their Families Program, Phase Two—(OMB No. 0930–0192, Revision)—SAMHSA's Center for Mental Health Services (CMHS) is conducting Phase II of this national evaluation project. Phase II collects data on child mental health outcomes, family life, and service system development and performance. Child and family outcomes of interest include the following: child symptomatology and functioning, family functioning and material resources, and caregiver strain. Delivery system variables of interest include the following: system of care development, adherence to system of care principles, coordination and linkages among agencies, and congruence between services planned versus those received.

To address the research questions in the national evaluation, a longitudinal quasi-experimental design is being used that includes data collection in all grantee sites and comparison sites (where services are delivered in a more traditional manner). This multi-level evaluation is comprised of several major components. Data collection methods include interviews with caregivers and youth, site visits, case record reviews, service diaries, and provider surveys.

Data collection for this evaluation will be conducted over a six-year period. The length of time that families will participate in the study ranges from 18 to 36 months depending on when they enter the evaluation. The average annual respondent burden is estimated below; this represents an annual average burden reduction of 6,237 hours from the level currently approved by the Office of Management and Budget.

This revision to the currently approved data collection activities involves: (1) Reducing the number of sites where data collection will occur from 27 to 25, (2) extending the time frame for data collection by an additional 18 months, (3) adding a treatment effectiveness study in two sites including assessment of outcomes, treatment fidelity, and interaction of the treatment with the larger system of care, (4) adding a survey of clinicians/practitioners on their use of evidence-based treatments, and (5) adding a study of how systems of care are sustained after program funding ends.

Instrument	Respondent	Number of respondents	Average number of total responses/respondent	Hours per response	Total burden hours	Annual burden hours
System-level Assessment:						
Interview Guides and Data Collection Forms—Round One Sites.	Key site informants	[1] 325	[2] 5	1.000	1,625	250
Interview Guides and Data Collection Forms—Round Two Sites.	Key site informants	[1] 350	[2] 4	1.000	1,400	215
Services and Costs Study:						
No respondent burden is associated with this study.	na	na	na	na	na	na
Cross-sectional Descriptive Study:						
Descriptive Interview Questionnaire (DIQ)	Caregiver	[3] 5,550	[4] 6	0.166	5,528	850
Child and Family Outcome Study:						

Instrument	Respondent	Number of respondents	Average number of total responses/respondent	Hours per response	Total burden hours	Annual burden hours
Restrictiveness of Living Environment and Placement Stability Scale (ROLES).	Caregiver	5,550	6	0.083	2,764	425
Child and Adolescent Functional Assessment Scale (CAFAS)—subscales or Preschool and Early Childhood Functional Assessment Scale (PECFAS).	Caregiver	5550	6	0.333	11,089	1,706
Education Questionnaire (EQ)—formerly one of the CAFAS subscales.	Caregiver	5,550	6	0.166	5,528	850
Behavioral and Emotional Rating Scale (BERS).	Caregiver	5,550	6	0.166	5,528	850
Child Behavior Checklist (CBCL) or CBCL Ages 2–3.	Caregiver	5,550	6	0.333	11,089	1,706
Family Assessment Device (FAD)	Caregiver	5,550	6	0.166	5,528	850
Family Resource Scale (FRS)	Caregiver	5,550	6	0.166	5,528	850
Caregiver Strain Questionnaire (CGSQ)	Caregiver	5,550	6	0.166	5,528	850
Delinquency Survey (formerly one of CAFAS subscales).	Youth	[5] 3,330	6	0.083	1,658	255
Substance Abuse Survey A and B (formerly one of CAFAS subscales).	Youth	3,330	6	0.166	3,317	510
Youth Self-Report (YSR)	Youth	3,330	6	0.333	6,653	1,024
Family Assessment Device (FAD)	Youth	3,330	6	0.166	3,317	510
Intervention-level Assessment:						
Family Satisfaction Questionnaire—Abbreviated (FSQ–A).	Caregiver	5,550	[6] 4	0.116	2,575	396
Multi-sector Service Contacts (MSSC)	Caregiver	5,550	4	0.250	5,550	854
Service Experience Questionnaire (SEQ)	Caregiver	[7] 1,012	4	0.333	1,348	207
Experience with Service System Questionnaire (ESSQ).	Caregiver	1,012	4	0.250	1,012	156
Service and Support Diary and Interview	Caregiver	[8] 200	[9] 9	0.500	900	138
Youth Satisfaction Questionnaire—Abbreviated (YSQ–A).	Youth	3,330	4	0.083	1,106	170
Service Experience Questionnaire (SEQ)	Youth	607	4	0.250	607	93
Provider Service Log and Interview	Provider	[10] 200	9	0.500	900	138
Provider Attitudes and Practices Survey (PAPS).	Provider	[11] 480	[12] 2	0.166	159	25
Treatment Effectiveness Study:						
Diagnostic Interview Schedule for Children	Caregiver	[13] 300	1	0.500	150	23
DSM–IV Structured Interview for Disruptive Behavior Disorders.	Caregiver	300	[14] 4	0.166	199	31
Eyberg Child Behavior Inventory (ECBI)	Caregiver	200	4	0.166	133	20
Dyadic Parent-Child Ineteraction Coding System II (DPICS–II).	Caregiver	200	[15] 2	0.250	100	15
Dyadic Parent-Child Interaction Coding System II (DPICS–II).	Child	200	[15] 2	0.250	100	15
Sutter-Eyberg Student Behavior Inventory-Revised (SESBI–R).	Teacher	200	4	0.166	133	20
PCIT Caregiver Integrity Checklist	Caregiver	100	12	0.050	60	9
PCIT Therapist Integrity Checklist	Clinician	100	12	0.050	60	9
Caregiver Session Review Form	Caregiver	200	12	0.033	79	12
Therapist Session Review Form	Clinician	200	12	0.033	79	12
Therapy Procedures Checklist (TPC)	Caregiver	200	1	0.083	17	3
Therapy Procedures Checklist (TPC)	Clinician	200	1	0.166	33	5
System of Care Practice Review (SOCPR)	Caregiver	60	1	1.000	60	9
System of Care Practice Review (SOCPR)	Child	60	1	0.750	45	7
System of Care Practice Review (SOCPR)	Clinician	60	1	1.000	60	9
System of Care Practice Review (SOCPR)	Informal Helper	60	1	0.250	15	2
Evidence-based Treatment Survey:						
Evidence-based Treatment Survey	Clinicians	1,000	1	0.250	250	38
Sustainability Survey:						
Sustainability Survey (Web survey)	Local Site Informants.	[16] 204	1	0.750	153	23
Sustainability telephone follow-up interview	Local site and State-level Informants.	[17] 153	1	1.000	153	24
Total					92,116	14,164

[1] An average of 25 stakeholders per grantee site. Round One has 11 grantee sites (some grantees have multiple service sites that are assessed) and two comparison sites. Round Two has 14 grantee sites (no multiple sites) and no comparison sites. These stakeholders will include site administrative staff, providers, agency representatives, and family representatives.

[2] Round One sites participate in system assessment site visits annually. Round Two sites are assessed every 18 months.

[3] Number of respondents across 23 grantees and 2 comparison sites. Average based on a 5 percent attrition rate at each data collection point. These data are collected as part of the grantees' routine intake processes. Hence, burden is calculated only for the subset of the Cross-sectional Descriptive Study sample that also participates in the Child and Family Outcome Study.

[4] Average number of responses per respondent based on 7 data collection points for children recruited in year 2, 6 for children recruited in year 3, and 4 for children recruited in year 5 (of grantee funding).

[5] Based on Phase I finding that approximately 60 percent of the children in the evaluation were 11 years old or older.

[6] Based on an average length of time in services of 18 months, respondents will complete satisfaction and service measures at intake, 6-month, 12-month, and 18-month data collection points.

[7] Includes respondents in 2 grantee and 2 comparison sites.

[8] Based on 50 families each from 2 grantee and 2 comparison sites.

[9] Data collection will occur once at baseline and then biweekly for 16 weeks.

[10] Providers of 50 families each from 2 grantee and 2 comparison sites.

[11] An estimated 120 providers each from 2 grantee and 2 comparison sites will complete the survey.

[12] Data collection will be conducted in years 5 and 6 (of grantee funding).

[13] Assumes that one-third of children screened will not meet criteria.

[14] Caregivers will complete at intake, 3-month, 6-month, and 9-month data collection points.

[15] Fifteen minute observation of caregiver-child interaction while engaged in 3 five minute tasks at intake and at 3 months (pre- and post-treatment).

[16] Includes four site level respondents (i.e., current or former project director, key mental health representative, family representative, agency representative) at 51 Phase I and Phase II sites.

[17] Includes two site-level and one state-level respondent for all 51 sites included in the sustainability survey from Phase I and Phase II.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Herron Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 23, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–27558 Filed 10–29–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF INTERIOR

Office of the Secretary

Delaware & Lehigh National Heritage Corridor Commission Meeting

AGENCY: Department of Interior, Office of the Secretary.

ACTION: Notice of Meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware & Lehigh National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: Friday, November 8, 2002, Time 1:30 p.m. to 4 p.m.

ADDRESSES: Bethlehem Steel Learning Center, 1170 Eighth Avenue, Bethlehem, PA 18016–7699.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware and Lehigh Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988 and extended through Public Law 105–355, November 13, 1998.

FOR FURTHER INFORMATION CONTACT: C. Allen Sachse, Executive Director, Delaware and Lehigh Heritage Corridor Commission, 10 E. Church Street, Room A–208, Bethlehem, PA 18018, (610) 861–9345.

Dated: October 24, 2002.

C. Allen Sachse,

Executive Director, Delaware and Lehigh Heritage Corridor Commission.

[FR Doc. 02–27552 Filed 10–29–02; 8:45 am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by November 29, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Randy Miller's Predators In Action, Inc., Big Bear City, CA, PRT—062680 and 063077.

The applicant requests a permit to export and re-import captive-born tigers (*Panthera tigris*) to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three-year period.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: October 18, 2002.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–27532 Filed 10–29–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by November 29, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Jack A. Leuenberger, Saginaw, MI, PRT–063371.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Robert John Gallagher, Sugar Land, TX, PRT–063420.

The applicant requests a permit to import the sport-hunted trophy on one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Edwin Kauffman, Wellsville, PA, PRT–062538.

The applicant requests a permit to import the sport-hunted trophy on one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Neil Bayley, Glenn Dale, MD, PRT–063291.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Date: October 4, 2002.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–27533 Filed 10–29–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by November 29, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–063575

Applicant: Charles R. Kokesh, Santa Fe, NM

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: October 11, 2002.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–27534 Filed 10–29–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for marine mammals.

SUMMARY: The following permit was issued.

ADDRESSES: Documents and other information submitted for this application is available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358-2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION: On April 29, 1999, a notice was published in the **Federal Register** (64 FR 23096), that an application had been filed with the Fish and Wildlife Service by Ronnie Grant May for a permit (PRT–010661) to import one polar bear (*Ursus maritimus*) taken from the Lancaster Sound polar bear population, Canada, for personal use.

Notice is hereby given that on September 24, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

Dated: September 27, 2002.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–27535 Filed 10–29–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–670–02–1610–JP–064B]

Notice of Availability of an Environmental Assessment and Associated Proposed Amendment to the California Desert Conservation Area Plan for Off-Road Vehicle Trail Designations in the Western Colorado Desert (WECO); Correction of Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction of comment period.

SUMMARY: The Bureau of Land Management (BLM) published in the **Federal Register** on October 18, 2002, a notice of availability of an Environmental Assessment and associated proposed amendment to the California Desert Conservation Area Plan for off-road vehicle trail designations in the Western Colorado Desert (WECO) portion of Imperial County, California. This notice erroneously indicated a comment period of 45 days after publication. The correct comment period closes 30 days from the Notice of availability, which is November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Arnold Schoeck, Bureau of Land Management, 1661 South 4th Street, El Centro, CA 92243; (760) 337–4441.

Mary Smelcer,

Acting Assistant Director for Renewable Resources and Planning.

[FR Doc. 02–27677 Filed 10–28–02; 10:24 am]

BILLING CODE 4310–JA–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–03–0777–30]

Call for Nominations for Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Resource Advisory Council call for nominations.

SUMMARY: The purpose of this notice is to solicit public nominations for a vacant position on the Bureau of Land Management (BLM) Nevada Northeastern Great Basin Resource Advisory Council (RAC). The RAC provides advice and recommendations to BLM on land use planning and management of the public land within northeastern Nevada. Public nominations will be considered for 45 days after the publication date of this notice.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. The vacant position for the Northeastern Great Basin RAC is Category Two representing wildlife interest groups.

Individuals may nominate themselves or others. Nominees must be residents of Nevada. Nominees will be evaluated based on their education, training, experience, and their knowledge of northeastern Nevada. Nominees should have demonstrated a commitment to collaborative resource decisionmaking. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's qualifications.

Simultaneous with this notice, BLM Elko Field Office will issue a press release providing additional information for submitting nominations. Nominations should be sent to Helen Hankins, BLM Elko Field Office, 3900 East Idaho Street, Elko, NV 89801; (775) 753–0200.

DATES: All nominations should be received by the BLM Elko Field Office by December 16, 2002.

FOR FURTHER INFORMATION CONTACT: Mike Brown, Public Affairs Officer, Elko Field Office, 3900 E. Idaho Street, Elko, NV 89801. Telephone: (775) 753–0386. E-mail: *mbrown@nv.blm.gov*

Dated: October 23, 2002.

David Stout,

Associate Field Manager.

[FR Doc. 02–27553 Filed 10–29–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–03–0777–30]

Notice of public meeting, Northeastern Great Basin Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Nevada Northeastern Great Basin Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting includes a field tour on December 5, 2002 departing the BLM Elko Field Office, 3900 East Idaho Street, Elko, Nevada, at 1 p.m. and returning at 5 p.m. The business meeting will be held December 6, 2002 at the BLM Elko Field Office beginning at 9 a.m. The public comment period will begin at approximately 1 p.m. and the meeting will adjourn approximately 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mike Brown, Public Affairs Officer, Elko Field Office, 3900 E. Idaho Street, Elko, NV 89801. Telephone: (775) 753–0386. E-mail: *mbrown@nv.blm.gov.*

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Nevada. The field tour will visit the Conner's Creek and focus on livestock management and restoration issues. In the event of inclement weather, the tour will visit the Maggie Creek area and focus on mining and restoration issues. *At the business meeting, topics we plan to discuss include:*

Off-Highway Vehicle Final Guidelines,

Vegetation Draft Guidelines,

Mining Update,

California National Historic Trail Interpretive Center,

Coordinated Noxious Weed Treatments,

Field Managers' and District Rangers' Reports,

Other topics the Council may raise.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact Mike Brown, BLM Elko Field Office, 3900 East Idaho Street, Elko, Nevada 89801, telephone (775) 753–0386.

Dated: October 23, 2002.

David Stout,

Associate Field Manager.

[FR Doc. 02–27556 Filed 10–29–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Navajo Unit, Colorado River Storage Project, New Mexico and Colorado

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of extension of public comment period for 30 days.

SUMMARY: Notice is hereby given that the comment period for the Navajo Reservoir Operations Draft Environmental Impact Statement is extended an additional 30 days to December 4, 2002. The end of the public comment period, as noted in the September 4, 2002, **Federal Register** (67 FR 56580) was November 4, 2002.

DATES: The public comment period is now extended to December 4, 2002.

ADDRESSES: Written comments on the DEIS should be addressed to Ken Beck, Bureau of Reclamation, Western Colorado Area Office, 835 East Second Avenue, Suite 400, Durango, Colorado 81301; telephone (970) 385–6558; faxogram (970) 385–6539; e-mail: *navcomments@uc.usbr.gov.* Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

FOR FURTHER INFORMATION CONTACT: Ken Beck, Bureau of Reclamation, Western Colorado Area Office, 835 East Second Avenue, Suite 400, Durango, Colorado 81301, telephone (970) 385–6558.

Dated: October 9, 2002.

Errol Bartholomew,

Acting Regional Director, Upper Colorado Region.

[FR Doc. 02–27544 Filed 10–29–02; 8:45 am]

BILLING CODE 4310–MN–P

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. Speed Mining, Inc.

[Docket No. M–2002–082–C]

Speed Mining, Inc., P.O. Box 1083, Beckley, West Virginia 25802 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its American Eagle Mine (I.D. No. 46–05437) located in Kanawha County, West Virginia. The petitioner requests that its previous petition for modification, docket number M–2001–041–C, be amended as follows: The petitioner will drill out each of the oil wells as already specified in the previous petition. The petitioner will pump the expandable cement to the bottom of the lowest minable seam (Eagle) and pump Portable Class ''A'' cement on top of the expandable plug to the next Powellton Seam which is approximately 117 feet above. The petitioner states that the Powellton Seam is the anticipated area for broken strata due to subsidence. The petitioner will leave the area from Powellton Seam to the surface open for release of methane from the longwall gob after the longwall has intersected the well. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. H&M Coal Company

[Docket No. M–2002–084–C]

H&M Coal Company, 48 Meadowview Road, Pine Grove, Pennsylvania 17663 has filed a petition to modify the application of 30 CFR 75.1400 (Hoisting equipment; general) to its Rocky Top Mine (I.D. No. 36–09072) located in Schuylkill County, Pennsylvania. The petitioner proposes to use a slope conveyance (gunboat) for transporting persons without installing safety catches or other no less effective devices. The petitioner would instead use increased rope strength and secondary safety rope connections in place of such devices. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. KenAmerican Resources, Inc.

[Docket No. M–2002–085–C]

KenAmerican Resources, Inc., 881 Corporate Dr., Suite 204, Lexington, Kentucky 40503 has filed a petition to modify the application of 30 CFR 75.380(g) (Escapeways; bituminous and lignite mines) to its Brier Creek Mine (I.D. No. 15–18495) located in Muhlenberg County, Kentucky. The petitioner requests a modification of the

existing standard so that the primary escapeway for the #9 Slope would not be required to be separated from the belt entries until initial development stage is completed, that is, when connection is made to the airshaft. The petitioner has listed in this petition specific terms and conditions that would be followed until the initial development stage is completed. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. D&F Deep Mine Coal Company

[Docket No. M–2002–086–C]

D&F Mine Coal Company, RD 1 Box 33A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1002–1 (Location of other electric equipment: requirements for permissibility) to its Buck Drift Mine (I.D. No. 36–07456) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to permit the use of non-permissible electric equipment including drags, battery locomotives, communication systems and other electric equipment outby the last crosscut within 150 feet of the pillar line. The petitioner states that operation of this equipment would be suspended anytime methane concentration at the equipment reaches 0.5 percent either during operation or when found during preshift examination. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Peabody Coal Company

[Docket No. M–2002–087–C]

Peabody Coal Company, 202 Laidley Tower, P.O. Box 1233, Charleston, West Virginia 25324–1233 has filed a petition to modify the application of 30 CFR 75.1002 (Location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Highland Mine (I.D. No. 15–02709) located in Union County, Kentucky. The petitioner requests that its previous petition for modification, docket number M–2001–040–C, be amended to revise paragraph 14(b), to allow routine use of cable crossovers, and to revise paragraph 43(b), to allow a temporary transformer that is not mounted to the mining machine. The petitioner states that the Highland Mine will be operating with Joy 14CM27 miners that are designed to operate in lower coal. Where clearance between the machine and the roof is smaller, the cable may be better protected with the properly designed crossover specified in the previous petition. The petitioner further states that the 14CM27 miner does not have provisions for tramming with a 995-volt input, and the step up transformer specified in revised paragraph 43(b), which would allow tramming of the 14CM27 machine with better control, may be less subject to damage if it is not mounted on the mining machine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

6. Coastal Coal Company, LLC

[Docket No. M–2002–088–C]

Coastal Coal Company, LLC, P.O. Box 1578, Coeburn, Virginia 24230 has filed a petition to modify the application of 30 CFR 77.214(a) (Refuse piles; general) to its VICC #8 Mine (I.D. No. 44–06906), and VICC #3 Mine (I.D. No. 44–06853) located in Wise County, Virginia. The petitioner requests a modification of the existing standard to allow construction of a refuse pile over abandoned mine openings. The petitioner proposes to use an existing mine pit as a location for disposal of mine scalp rock. The petitioner states that disposal of the scalp rock at this location will necessitate filling over (2) two mine openings. The petitioner has listed in this petition specific procedures that would be followed when sealing mine openings. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

7. Europa Coal Company, Inc.

[Docket No. M–2002–089–C]

Europa Coal Company, Inc., 430 Harper Park Drive, Beckley, West Virginia 25801 has filed a petition to modify the application of 30 CFR 75.1002 (Location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Dry Branch Coalburg Mine (I.D. No. 46–08968) located in Boone County, West Virginia. The petitioner proposes to use a Joy 12CM27 continuous miner which operates at 2,400 volts. The petitioner has listed in this petition specific procedures that would be followed when the proposed alternate method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

8. Hunt Midwest Mining, Inc.

[Docket No. M–2002–004–C]

Hunt Midwest Mining, Inc., 8300 NE Underground Drive, Kansas City, Missouri 64161 has filed a petition to modify the application of 30 CFR 57.11052 (Refuge areas) to its Stamper Quarry (I.D. No. 23–02232) located in Platte County, Missouri. The petitioner proposes to provide bottled water to the refuge chamber instead of a water line. The petitioner asserts that an unopened 5 gallon bottle has a shelf life of two years and the date of bottling is stamped on the neck of the bottle. 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, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before November 29, 2002. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 24th day of October 2002.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 02–27572 Filed 10–29–02; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–128]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted on or before December 30, 2002.

ADDRESSES: All comments should be addressed to Karl Beisel, Code HC, National Aeronautics and Space

Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Required Central Contractor Registration.

OMB Number: 2700–0097.

Type of review: Extension.

Need and Uses: The information obtained in this collection will be used to populate the vendor database in the NASA Integrated Financial Management (IFM) System.

Affected Public: Business or other for-profit; Federal Government; Not-for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 10,200.

Annual Responses: 1,200.

Hours Per Request: Approximately 15 minutes/request.

Annual Burden Hours: 3,130.

Frequency of Report: One time.

Patricia L. Dunnington,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 02–27581 Filed 10–29–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–127]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)). This information collection provides data used in the Agency's accrual accounting and cost-based budgeting systems, maintained as required under Federal law.

DATES: All comments should be submitted or or before November 29, 2002.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: NASA Contractor Financial Management Reports.

OMB Number: 2700–0003.

Type of review: Extension.

Need and Uses: The NASA Contractor Financial Management Reporting System is the basic financial medium for contractor reporting of estimated and incurred costs, providing essential data for projecting costs and hours to ensure that contractor performance is realistically planned and supported by dollar and labor resources. The data provided by these reports is an integral part of the Agency's accrual accounting and cost-based budgeting systems required under 31 U.S.C. 3512.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Number of Respondents: 850.

Responses Per Respondent: 12.

Annual Responses: 10,200.

Hours Per Request: 9 hrs.

Annual Burden Hours: 91,500.

Frequency of Report: Quarterly; Monthly.

Patricia Dunnington,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 02–27580 Filed 10–29–02; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–373 and 50–374]

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing; Exelon Generation Company, LLC, LaSalle County Station, Units 1 and 2

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–11 and NPF–18 issued to Exelon Generation Company, LLC (the licensee), for operation of the LaSalle County Station, Units 1 and 2, respectively, located in LaSalle County, Illinois.

The proposed amendments would extend the use of the current pressure and temperature (P/T) limit curves in Technical Specification (TS) 3.4.11, ''RCS Pressure and Temperature (P/T) Limits,'' until December 15, 2004. The proposed change will allow sufficient time for the incorporation of the General Electric Topical Report NEDC–32983P, ''General Electric Methodology for Reactor Pressure Vessel Fast Neutron Flux Evaluation,'' methodology into the P/T curves in TS 3.4.11. There are no TS page changes associated with this change.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change requests for LaSalle County Station, Units 1 and 2, that the current pressure and temperature (P/T) limit curves in TS 3.4.11, ''RCS Pressure and Temperature (P/T) Limits,'' remain acceptable for use until December 15, 2004. The proposed change is to allow sufficient time for the incorporation of the General Electric Topical Report NEDC–32983P, ''General Electric Methodology for Reactor Pressure Vessel Fast Neutron Flux Evaluation,'' methodology into the P/T curves in TS 3.4.11. NEDC–32983P methodology has been previously approved by the NRC for use by licensees. The P/T limits are prescribed during normal operation to avoid encountering pressure, temperature, and temperature rate of change conditions that might cause undetected flaws to propagate and cause nonductile failure of the reactor coolant pressure boundary, a condition that is unanalyzed. Thus, the proposed change does not have any affect on the probability of an accident previously evaluated.

The P/T curves are used as operational limits during heatup or cooldown maneuvering, when pressure and temperature indications are monitored and compared to the applicable curve to determine that operation is within the allowable region. The P/T curves provide assurance that station operation is consistent with previously evaluated accidents. Thus, the radiological consequences of any accident previously evaluated are not increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not change the control parameters governing unit operation or the response of plant equipment to transient conditions. The proposed change does not introduce any new equipment, modes of system operation or failure mechanisms.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change for LaSalle County Station is to allow sufficient time for the incorporation of the General Electric Topical Report NEDC–32983P methodology into the P/T curves in TS 3.4.11. NEDC–32983P methodology has been previously approved by the NRC for use by licensees. EGC has performed new fluence calculations using NEDC–32983P methodology for LaSalle County Station Units 1 and 2 and compared the results from these calculations to the current TS 3.4.11 P/T curves. The results of the fluence calculation comparisons demonstrate that the current P/T curves in TS 3.4.11 remain valid until at least 15.7 Effective Full Power Years (EFPY). As of June 1, 2002, LaSalle County Station Unit 1 operating time was approximately 11.6 EFPY and Unit 2 was approximately 11.0 EFPY. Considering a 100% capacity factor, 15.7 EFPY will not be reached on either unit until after June 2006.

EGC is currently scheduled to submit to the NRC a proposed change to TS 3.4.11 in November 2002. The proposed changes will utilize NEDC–32983P methodology to calculate the P/T curves in TS 3.4.11 for LaSalle County Station Units 1 and 2.

The request that the current P/T curves remain valid until December 15, 2004, is based on the above information that using NEDC–32983P methodology, the current TS 3.4.11 P/T curves remain valid during this period of time.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based upon the above, EGC concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR5O.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By [insert date 30 days from date of publication], the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884; April 29, 2002.''

opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to hearingdocket@nrc.gov. A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 21, 2002, which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 24th day of October 2002.

For the Nuclear Regulatory Commission.

William A. Macon, Jr.,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–27587 Filed 10–29–02; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 70–143]

Environmental Statements; Availability, etc.: Nuclear Fuel Services, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of docketing, notice of proposed action, revision of notice of Opportunity for Hearing on the amendment of Nuclear Fuel Services, Inc., Materials License SNM–124 to authorize construction and operation of the Uranyl Nitrate Storage Building, and notice of Finding of No Significant Impact.

The U.S. Nuclear Regulatory Commission (NRC) is considering an amendment dated February 28, 2002, of Materials License SNM–124 to authorize construction and operation of a Uranyl Nitrate Storage Building. The staff hereby provides notice of the license amendment request and issues a notice of Opportunity for Hearing. The staff has prepared an Environmental Assessment and Finding of No Significant Impact (FONSI) in support of this action. The Agencywide Documents Access and Management System (ADAMS) accession number for the Environmental Assessment is ML021790068.

By letter dated February 28, 2002, Nuclear Fuel Services, Inc. (NFS) requested an amendment to Materials License SNM–124 to authorize construction and operation of the Uranyl Nitrate Storage Building (ADAMS accession numbers ML02730343 containing the cover letter and affidavit, and ML021720458 containing attachment III, proposed page changes to SNM–124). NFS submitted two revisions to the license amendment application, dated May 9, 2002 (ADAMS accession number ML021350445 containing the nonproprietary version of the Integrated Safety Analysis Summary) and August 23, 2002 (ADAMS accession numbers ML022610016 containing the revised Integrated Safety Analysis cover letter, and ML022610048 containing attachment II, the nonproprietary version of the revised Integrated Safety Analysis Summary, mistakenly dated August 31, 2002, in ADAMS).

This application was docketed under 10 CFR part 70. The docket no. is 70–143.

On July 9, 2002, the NRC issued a notice of Opportunity for Hearing on the amendment of Materials License SNM–124, a notice of Finding of No

Significant Impact and a summary of an Environmental Assessment for the amendment of Nuclear Fuel Services, Inc., Materials License SNM–124 to authorize construction and operation of the Uranyl Nitrate Storage Building. (67 FR 45555). The **Federal Register** notice published on July 9, 2002, provided inadequate identification of the license amendment application. The notice neither set forth the date upon which the application had been filed nor supplied any information as to how the content of the application might be located. This revision is intended to correct those deficiencies.

Notice of Availability of Amendment Request

NFS and Framatome ANP, Inc. are designing and are planning to construct a Blended Low Enriched Uranium (BLEU) Complex at the NFS site in Erwin, TN. As part of the BLEU complex, a Uranyl Nitrate Building (UNB) will be constructed to store and process uranyl nitrate. The February 28, 2002, amendment application seeks the authorization to construct and operate the UNB. The amendment application, in accordance with 10 CFR 70.61, contains an Integrated Safety Analysis (ISA) Summary which describes the UNB and its process systems. The ISA Summary encompasses all of the processes which involve handling of Special Nuclear Material (SNM) and any associated equipment and/or off-stream processes that could be impacted or intermingled with SNM. The ISA summary provides general information on the NFS site, and it evaluates the accident sequences which could arise from the operations in the UNB.

This application will be reviewed by the staff using NRC guidance, NUREG–1520 ''Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility.''

The amendment application, and the two revisions, are available for public inspection and copying at the NRC Public Document Room, U.S. Nuclear Regulatory Commission Headquarters, Room 0–1F21, 11555 Rockville Pike, Rockville, MD 20852, or through the ADAMS system using the accession numbers mentioned above.

Notice of Opportunity for Hearing

The NRC hereby provides notice of an Opportunity for Hearing on the February 28, 2002, license amendment request to construct and operate the Uranyl Nitrate Building (UNB) under the provisions of 10 CFR part 2, subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(d), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Nuclear Fuel Services, 1205 Banner Hill Road, Erwin, Tennessee 37650–9718. A copy of the request for hearing should also be sent to the attorney for the licensee; and

(2) The NRC staff, by delivery to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

In addition, members of the public may provide comments on the subject application within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to Michael Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555.

Summary of Environmental Assessment

Identification of the Proposed Action

The proposed action currently before the U.S. Nuclear Regulatory Commission (NRC) is to allow the licensee to construct and operate a Low-Enriched Uranyl Nitrate Storage Building (UNB) at the Nuclear Fuel Services, Inc. (NFS) site in Erwin, Tennessee, and to increase the ^{235}U possession limit. This action is part of the Blended Low-Enriched Uranium (BLEU) project described below. The other related future activities which were considered to contribute to the environmental impacts for this project are: construction and operation of an Oxide Conversion Building (OCB), construction and operation a new Effluent Processing Building (EPB), and relocation of downblending operations within the NFS protected area in a BLEU Preparation Facility (BPF).

On March 4, 2002, NRC issued a notice of intent to prepare an environmental assessment (EA) for amendment of Special Nuclear Material (SNM) License No. SNM–124 for NFS. To avoid segmentation of the environmental review, NFS has submitted environmental documentation for three proposed license amendments, which will impact the site over the next few years.

The Environmental Assessment (EA) for these actions does not serve as authorization for any proposed activities, rather it assesses the environmental impacts of the actions. As each amendment application is submitted, the NRC staff will perform a separate safety evaluation, which will be the basis for the approval or denial of the application. As part of the safety evaluation, the NRC will perform an environmental review. If the review indicates that this EA appropriately and adequately assesses the environmental effects of the proposed action, then no further assessment will be performed. However, if the environmental review indicates that this EA does not evaluate fully the environmental effects, another EA (or environmental impact statement (EIS)) will be prepared in accordance with the National Environmental Policy Act (NEPA).

Need for the Proposed Action

The Blended Low Enriched Uranium (BLEU) Project is part of a Department of Energy (DOE) program to reduce stockpiles of surplus high enriched uranium (HEU) through re-use or disposal as radioactive waste. Re-use as

low enriched uranium (LEU) is considered the favorable option by the DOE because (1) weapons grade material is converted to a form unsuitable for nuclear weapons (addressing a proliferation concern), (2) the product can be used for peaceful purposes, and (3) the commercial value of the surplus material can be recovered. An additional benefit of re-use is avoidance of unnecessary use of limited radioactive waste disposal space. Framatome ANP Inc. has contracted with NFS to downblend surplus HEU material to a LEU nitrate and to convert the LEU to an oxide form. The NFS LEU oxide product is expected to be fabricated into commercial reactor fuel at a separate facility, for use in a Tennessee Valley Authority (TVA) nuclear power reactor; however, the NFS proposed action is limited to the production of LEU oxide, receipt and storage of LEU nitrate, down blending of HEU to LEU, and conversion of LEU nitrate to LEU oxide.

Environmental Impacts of the Proposed Action

For the proposed license amendments, construction and processing operations will result in the release of low levels of chemical and radioactive constituents to the environment. Under accident conditions, higher concentrations of materials could be released to the environment over a short period of time.

Normal Operations

Radiological impacts from the proposed BLEU Project operations include release of small quantities of radioactive material to the atmosphere and surface water. Radionuclides that may be released include isotopes and some daughter products of the actinide elements uranium, thorium, plutonium, americium, actinium, and lesser quantities of fission products including technetium, cesium, and strontium. Based on source material properties and processing information, NFS has estimated the quantities of airborne and liquid effluents and used this information to estimate doses to the maximally exposed individual. While some effluents for the proposed action are increasing in relation to current releases, the total annual dose estimate for the maximally exposed individual from all planned effluents is 0.022 mSv (2.2 mrem). This result is well below the annual public dose limit of 1 mSv (100 mrem) in 10 CFR part 20 and the 0.1 mSv (10 mrem) ALARA constraint. The estimated dose for a number of radionuclides is conservative, because the analysis assumed no pollution controls were in place.

Solid wastes generated by BLEU Project operations will be packaged into drums or boxes. Each container will be assayed for uranium content to verify that storage, shipment, and disposal requirements are met.

The potential for increase in dose to workers at NFS due to the BLEU project was evaluated. Operation of the BPF, OCB and UNB is not expected to increase the dose to workers at the NFS facility, because the types and quantity of material, and the processing, will be similar to what is already licensed at the site. NFS is committed to keeping doses as low as reasonable achievable (ALARA) by maintaining a radiation protection program that minimizes radiation exposures and releases of radioactive material to the environment. In order to accomplish this, NFS has procedures for working with radioactive materials and monitoring programs to determine the doses received by employees.

Impacts from non-radiological contaminants to air, surface water, and groundwater were also assessed. Air quality is protected by enforcing emission limits and maintenance requirements for pollution control equipment, as required by several operating permits issued by the Tennessee Air Pollution Control Board, Department of Environment and Conservation. The primary non-radiological emissions are expected to include nitrogen oxides, hydrogen and ammonia. Normal emissions of gaseous effluents from the new processes are not expected to have a significant impact on offsite non-radiological air quality, because the estimated concentrations at the nearest site boundary are below the State of Tennessee primary air quality standards, with the exception of nitrogen oxides. For nitrogen oxides, NFS will exceed the current allowable limit; however, NFS is requesting modification to the existing air pollution control permit for the main stack. Modification of the permit is required because of changes in material input from the BPF and installation of additional process and ventilation equipment. This modified permit for the main stack has not been issued as of this EA; however, NRC expects that the State, under its authority to regulate air quality, will continue to set permit levels to limit environmental impacts from NFS effluents.

The proposed BPF and BLEU Complex are expected to produce liquid effluents. BPF waste streams will be sent to the NFS wastewater treatment facility and discharged into the Nolichucky River in accordance with the National Pollutant Discharge Elimination System (NPDES) permit and NRC radiological effluent limits in 10 CFR part 20. This liquid effluent will consist of raffinate, condensate, scrubber waste solution, and sodium hydroxide. The basic and acidic waste streams will be treated using precipitation and ion exchange processes.

Surface water quality is expected to be protected from future site activities by enforcing release limits and monitoring programs, as required under the NPDES permit. No impact on NPDES permit limits is anticipated with respect to operations at the proposed BLEU Complex or downblending at the BPF. Surface water runoff from the proposed action will generally flow to the northwest across the proposed BLEU Complex. This runoff will drain to culverts at the northwest boundary of the NFS site, and then empty into Martin Creek. A storm water construction permit will be obtained from the Tennessee Department of Environment and Conservation prior to any construction activities that would disturb the land. Erosion and sediment control measures (*e.g.*, straw bales and silt fences) will be employed to mitigate surface runoff into the drainage ditches and Martin Creek, thus reducing the impacts to surface water during the construction of the proposed BLEU Complex. Sluice gates will be installed at collection points within the proposed BLEU Complex for containment of any hazardous spills during the lifetime of BLEU operations.

Previous operation of the plant has resulted in localized chemical and radiological contamination of groundwater, including beneath the BPF. Groundwater monitoring conducted by NFS indicates that plumes of uranium, tetrachloroethylene, trichloroethylene, 1,2-dichloroethylene, and vinyl chloride, from past operations, could migrate offsite in the direction of the Nolichucky River. To address potential environmental impacts from this contamination, NFS has removed much of the source contamination through extensive remediation projects including excavation of contaminated areas in the North Site. In addition, NFS is decommissioning the Radiological Burial Ground and the North Site to remove more of the source of this contamination. NFS also is working with the Tennessee Department of Environment and Conservation and the U. S. Environmental Protection Agency to design remedial strategies and to

investigate the off-site extent of existing plumes.

The addition of the BLEU Complex will expand the physical site of the Erwin plant. Current environmental monitoring stations do not provide adequate coverage of the expanded site area. In addition, the current monitoring program lacks adequate coverage for groundwater in the vicinity of the proposed BLEU Complex. NFS plans to expand the existing environmental monitoring program to cover the BLEU Complex. Additional monitoring locations (*e.g.*, air, vegetation, soil, groundwater) will be proposed in a forthcoming license amendment request for the BLEU Project. For groundwater monitoring, NFS has indicated a minimum of one upgradient and three downgradient wells will be installed in the vicinity of the proposed BLEU Complex. NRC review of the proposed environmental monitoring program to determine compliance with 10 CFR part 20 requirements provides assurance that an adequate program will be in place prior to making a decision on the license amendments.

For normal operations, the proposed action will not discharge any effluents to the groundwater; therefore, no adverse impacts to groundwater are expected. Accidental releases of contaminants to groundwater appear unlikely due to design and control measures implemented by NFS.

A field investigation was conducted on the proposed BLEU complex site to determine the absence or presence of rare, threatened, or endangered plants. The survey focused primarily on the twenty federally listed threatened and endangered plants, but the State of Tennessee listing of rare and endangered vascular plants was also used for this survey. The results of the survey were that none of the plants on the federal or state lists were found to be present on this site, and the proposed actions on this site are not likely to adversely affect state and federally listed rare, threatened, or endangered plant species.

Unicoi County, the area in which the NFS site is located, contains one Federally Endangered mussel species, Appalachian elktoe (Alasmidonta raveneliana) near the confluence of the Nolichucky River and South Indian Creek. Because this is upstream of the confluence of the Nolichucky River and Martin Creek and the NFS site, no impact is expected on this species. No other threatened or endangered species listed on the Federal or State Threatened or Endangered Species List for the Region of Interest are known to potentially reside on the NFS site.

No impacts are expected on land use, biotic resources, socioeconomic resources, or cultural resources.

Accident Conditions

The conversion of HEU materials to low-enriched uranium dioxide at the BLEU Project will require the handling, processing, and storage of radioactive material and hazardous chemicals. An uncontrolled release of these materials from accidents could pose a risk to the environment as well as to workers and public health and safety.

The evaluation of potential accidents is carried out at a general level of detail in the EA to establish that the proposed processes, as described by NFS, will function safely with no significant adverse impacts to safety or the environment. A more detailed evaluation of the proposed processes will be carried out by the NFS in its integrated safety analysis, summaries of which will be submitted in the forthcoming BLEU Project license amendment requests.

The dissolution and downblending of HEU feed materials to low-enriched uranyl nitrate (UN) solution will be carried out in the BLEU Processing Facility. Remaining operations will be performed in the BLEU Complex area. This will include the storage of low-enriched UN solution in the UNB followed by further processing into uranium dioxide powder in the OCB, and treatment of the liquid effluent stream from the OCB in the EPB.

The primary chemicals used in the dissolution and downblending processes taking place in the BPF are: Nitric acid (70 percent solution); hydrogen peroxide (30 percent solution); sodium hydroxide (30 percent solution); sodium nitrate (45 percent solution); barium oxide (BaO); tributyl phosphate [$(C_4H_9)_3PO_4$]; normal paraffin fluid (Nopar 12 fluid); sodium carbonate (Na_2CO_3). The radioactive feed materials used include HEU/aluminum alloy, HEU metal (buttons), and natural uranium oxide. Reaction products and intermediates include sodium diuranate and UN solutions.

The main chemicals to be used and stored in the BLEU Complex are: low-enriched UN solution, anhydrous ammonia, aqueous ammonia (23 percent solution), nitric acid (50 percent solution), nitric acid (7 percent solution), liquid nitrogen, sodium hydroxide (50 percent solution), liquified petroleum gas (propane), and diesel fuel.

Many of the proposed process operations are patterned after existing NRC licensed processes, so operational experience and history build confidence that operations can be executed safely. Proposed process operations, such as the downblending of high-enriched UN to low-enriched UN, liquid-liquid extraction to purify UN solution, and HEU storage are very similar to corresponding processes licensed under NRC License SNM–124. The LEU solution will be converted to uranium dioxide powder in the OCB using the Framatome ANP Inc., process that is authorized by NRC License SNM–1227. Potential hazards associated with new operations were evaluated during the NRC review.

Primary hazards associated with the operation of the BLEU Project facilities involve: spill of chemical and or radioactive material in the building, leak in a storage tank or supply piping, release of gaseous and particulate effluents (chemical and/or radioactive materials) due to a malfunction of the process off gas treatment system, and upset in the control of process parameters leading to undesirable reactions and release of hazardous or explosive compounds such as hydrogen, hydrogen peroxide, ammonia, nitrogen oxides, nitric acid vapors. The loss of control of the process may include release of radioactive materials and nuclear criticality. These accidents can potentially impact worker safety, public health and safety, and the environment.

Primary controls relied upon to guard against inadvertent nuclear criticality in processing operations include concentration limits and use of favorable geometry process vessels. Measures to ensure chemical safety and safe handling of radioactive materials include the following:

- Tanks will be bermed for spill control and isolation;
- Tanks will be equipped with level control for overfill protection;
- Process off gases will be treated through scrubbers and HEPA filters prior to stack discharge;
- Process parameters will be controlled, and concentrations of hazardous or explosive chemicals will be maintained at safe levels. For example, sodium nitrate will be used in the HEU aluminum alloy dissolution process to minimize the formation of hydrogen, and air will be used in the dissolver to dilute the small quantities of hydrogen formed to safe levels.

Based on the information furnished in the NFS reports and summarized above, the safety controls to be employed in the processes for the BLEU Project appear to be sufficient to ensure planned processing will be safe.

Cumulative Impacts

The Studsvick Facility is located adjacent to the NFS property, just south of the proposed BLEU complex. This facility is licensed by the state to process radioactive wastes. Due to the proximity of the two facilities, the staff evaluated cumulative radiological impacts from air effluents, liquid effluents, and direct radiation. The annual average of NFS effluent data from 1996 through 2000 and the most recent effluent data (CY2000) from the operations at Studsvick adequately characterize the impacts from current operations. Foreseeable future impacts of the BLEU Project (including BLEU Preparation facility, additional Waste Water Treatment Facility effluents and BLEU Complex effluents) were also considered.

Future impacts from air emissions from NFS operations are estimated using environmental monitoring data from 1996 through 2000. The air emissions estimate for Studsvick, Inc., is based on year 2000 data. To bound the impacts, the baseline dose from NFS operations and current estimates of doses attributable to Studsvick are added to the foreseeable future impacts of BLEU Project operations. Though it is not likely that the same individual is the maximally-exposed individual for each of the facilities, the sum of these doses are considered to bound future impacts.

As demonstrated in semi-annual effluent reports, current liquid releases from the NFS site are well within the regulatory limits listed in 10 CFR part 20. NFS has provided conservatively-derived estimates of future discharges from the BLEU Project which were estimated using NCRP 123. The dose from these effluents, which are dominated by contributions from the solvent extraction raffinate at the BLEU preparation facility, when added to existing effluents, remain within regulatory limits.

The staff evaluated cumulative impacts to the sewer system of combined NFS, BLEU Project and Studsvick by estimating bounding concentrations that would be present in individual streams. NFS estimated the discharge from the BLEU Complex to be 6,300 gallons per day. This daily discharge volume was used to convert estimated quantities of annual discharges from the BLEU Complex (in units of curies) in terms of liquid concentration. Concentration values for Studsvick were also obtained from a year 2000 inspection report.

The bounding contributions from either NFS baseline operations or future BLEU operations are used to compare against the 10 CFR 20, appendix B sewer discharge limits. These impacts, along with the discharge fractions from Studsvick operations, are summed for comparison using the unity rule. The value of 0.059 is considerably less than 1, which indicates that sewer discharges will remain a low cumulative impact.

Direct radiation monitoring data are available for both Studsvick, Inc. and NFS operations. Both licensees and the State of Tennessee Department of Environment and Conservation monitor direct radiation. Because the direct radiation monitored at the fenceline is a cumulative value (dose from both sites), the monitoring program ensures that this dose will not exceed regulatory limits. Both facilities have successfully demonstrated compliance in the past. Due to the nature of the materials in the BLEU complex, direct radiation is not expected to increase as a result of this project.

Agencies and Persons Consulted

The following agencies were consulted during the preparation of the EA:

- Tennessee Historical Commission, Division of Archaeology,
- U.S. Fish and Wildlife Service, and
- State of Tennessee, Department of Environment and Conservation, Division of Radiological Health.

Conclusion

The NRC has concluded that the proposed action to construct and operate the UNB at the NFS site will not result in significant impact to human health or the environment.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment, as summarized above, related to the amendment of Special Nuclear Material License SNM–124. On the basis of the assessment, the Commission has concluded that environmental impacts associated with the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

In accordance with 10 CFR 2.790 of the NRC's ''Rules of Practice,'' the Environmental Assessment and the documents related to this proposed action will be available electronically for public inspection from the Publicly Available Records (PARS) component of NRC's document system (ADAMS), accession number ML021790068. ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html* (the Public Electronic Reading Room).

Dated in Rockville, Maryland, this 18th day of October, 2002.

For the U.S. Nuclear Regulatory Commission.

Robert Pierson,

Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–27589 Filed 10–29–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Public Meeting; Pre-application Early Site Permit Meetings for the Grand Gulf Site

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meetings in Port Gibson, Mississippi.

SUMMARY: The U. S. Nuclear Regulatory Commission (NRC) will hold facilitated meetings on November 14, 2002, to provide information to the public on the NRC Early Site Permit review process, as well as the opportunities for public involvement in that process for the Grand Gulf site. Entergy Operations Incorporated (Entergy) is expected to file an early site permit in June 2003 for a new reactor or reactors at the Grand Gulf site. The meetings will also include a discussion of the perspectives, roles, and responsibilities of the NRC in regard to the Grand Gulf site.

DATE/TIME: The meetings will be held on Thursday, November 14, 2002, beginning with the first meeting from 2 p.m. through 4:30 p.m. followed by a later meeting from 7 p.m. through 9:30 p.m. Each meeting will be preceded by an ''open house'' one hour prior to the meeting to allow for individual discussions with staff members.

LOCATION: Port Gibson City Hall, 1005 College Avenue, Port Gibson, Mississippi.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Special Council for Public Liaison, Office of General Council, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, or by telephone: (301) 415–1642 or e-mail: *fxc@nrc.gov*. Mr. Cameron will facilitate the meeting.

SUPPLEMENTARY INFORMATION: Additional information can be obtained from the Web site (*http://nrcweb.nrc.gov:300/reactors/new-licensing/license-reviews/esp.html*), or by contacting Mr. Ronaldo Jenkins at

(301) 415–2985, or via e-mail at *rvj@nrc.gov.*

Dated at Rockville, Maryland this twenty-fourth day of October 2002.

For the Nuclear Regulatory Commission.

James E. Lyons,

Director, New Reactor Licensing Project Office, Office of Nuclear Reactor Regulation.

[FR Doc. 02–27588 Filed 10–29–02; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Financial Management; Proposed Policy on Use of a Universal Identifier by Grant Applicants

AGENCY: Office of Management and Budget.

ACTION: Notice of Proposed Requirement for Use of a Universal Identifier by Grant Applicants.

SUMMARY: The Office of Management and Budget (OMB) seeks to establish a standard means for tracking Federal grant recipients throughout the entire grant life cycle and to provide the public with a uniform business practice. Currently Federal agencies use multiple and different identifiers for the entities which apply for and receive Federal grant funds, while a single identifier is used by entities which apply for and receive Federal contracts.

The Federal Government is in the process of developing an electronic standard grant application capability, known as E–APPLY, under an E-Grants system which will require each applicant to be uniquely identified. This notice seeks comments on the proposal by OMB's Office of Federal Financial Management (OFFM) to establish a requirement for applicants to register for a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)) number for use as the Universal Identifier needed to respond to Federal agency grant or cooperative agreement announcements. The DUNS is already in use by those entities seeking Federal contracts.

DATES: All comments on this proposal should be in writing, and must be received by December 30, 2002.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Electronic mail comments may be submitted to *sswab@omb.eop.gov.* Please include ''DUNS Comments'' in the subject line of the message. If including the comments as an attachment to the e-mail, identify the attachment with ''DUNS Comments.'' Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the e-mail message. Comments may also be submitted via facsimile to (202) 395–4915.

Comments may be mailed to Sandra R. Swab, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sandra R. Swab, Office of Federal Financial Management, Office of Management and Budget, at 202 395–5642 (direct), 202–395–3993 (main office), or via e-mail (*sswab@omb.eop.gov*).

SUPPLEMENTARY INFORMATION: The Federal Government is in the process of developing a government-wide electronic portal that will include grant opportunity announcement (E–FIND) and electronic application (E–APPLY) capabilities. This new system is referred to as E-Grants and is one of the 24 cross-agency electronic government (E-Gov) initiatives referred to in the President's Management Agenda.

The E–Grants system will require that a Universal Identifier be used to verify each applicant. The identifier will be used for grant status tracking purposes, as well as by the Federal agencies as a source of other business information pertaining to the applicant.

OMB expects that with the use of a Universal Identifier, the need for organizations to submit redundant data with each application and report will be significantly reduced. Agencies will be able to use the Universal Identifier to obtain the standard legal name and address of the organization doing business with the government. The use of the Universal Identifier will also make it possible to create a unified, simplified, government-wide grant application and report submission mechanism.

Use of the DUNS number as the Universal Identifier for grants-related business transactions will provide the public with a uniform business practice since the DUNS is already in use by those entities seeking Federal contracts. Furthermore, use of a Universal Identifier will enable applicants and grantees to carry out authenticated and secure electronic interactions with the Federal Government. For Federal agencies, grantee use of the Universal Identifier can facilitate an analysis of grant applications and awards across agencies.

The E-Grants system will be one means of implementing the requirement for a DUNS number for the Federal grant process. Applicants submitting paper applications will also be required to include a DUNS number.

OMB is working to ensure that the Federal Assistance Awards Data System (FAADS) database, the government-wide grant payment systems, and the Federal Audit Clearinghouse (FAC) database will incorporate the Universal Identifier and make grant information more accessible and usable for the public. OMB plans to require use of a Universal Identifier by October 1, 2003 (which is the planned implementation date of the E-Grants Application process, E-APPLY), contingent on the results of our review of the public comments received in connection with this proposed policy.

DUNS Number

Many entities already hold a D&B DUNS number. For those organizations that do not already have a DUNS number, the number is easily obtained by telephone or via the Internet (*http://www.dunandbradstreet.com*). The DUNS number will be assigned by D&B upon request at no charge to the requestor. About 10–12 data elements are required for D&B to assign a DUNS number. Data elements include business name(s), address, telephone numbers, ownership information, legal structure of business, primary line of business, and the number of employees.

Request for Comment

OMB seeks comment from the affected public on the proposal to require use of the DUNS number to conduct grants business with the Federal Government. Questions that you should address include: Are there any barriers that preclude organizations or entities from obtaining a DUNS number by the planned October 1, 2003, implementation date of the E-Grants application process (E-APPLY)? When this requirement is adopted, what outreach and education for the applicant community will be necessary to increase awareness of the requirement for DUNS numbers? What additional barriers or problems could result, if the proposed DUNS number requirement is expanded to require sub-recipients to obtain a DUNS number? Does the policy statement which follows provide sufficient information about the requirement to use a DUNS number?

Dated: October 17, 2002.

Joseph L. Kull,

Deputy Controller.

Proposed OMB Policy Directive

To the Heads of Executive Departments and Establishments

Subject: Requirement for Use of a Universal Identifier by Grant Applicants.

1. *Purpose.* This policy directive establishes the requirement for any applicant for Federal funds under a grant program to obtain a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number for use as the applicant's Universal Identifier.

2. *Authority.* This policy directive is part of the implementation of the Federal Financial Assistance Management Improvement Act of 1999 (Public Law 106–107).

3. *Background.* Public Law 106–107 requires the Office of Management and Budget (OMB) to direct, coordinate, and assist Executive Branch departments and agencies in establishing an interagency process to streamline and simplify Federal financial assistance procedures for non-Federal entities. It also requires each executive agency to develop, submit to the Congress, and implement a plan for the streamlining and simplification effort that ''allows applicants to electronically apply for, and report on the use of, funds from the Federal financial assistance program administered by the agency. . .''.

In response to that requirement, the Federal Government is in the process of developing an electronic standard grant application process under an E-Grants system, which requires each applicant to be uniquely identified by a Universal Identifier. The identifier will be used for grant status tracking purposes and as a source of business information pertaining to the applicant. Use of the Universal Identifier will enable applicants and grantees to carry out authenticated and secure electronic interactions with the Federal Government. Use of the DUNS number as the Universal Identifier for grants-related business transactions will provide the public with a uniform business practice since the DUNS is already in use by those entities seeking Federal contracts.

4. *Policy.* Applicants for Federal funds under any grant program administered by Federal agencies shall seek and obtain a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number for use as the Universal Identifier. A DUNS number is required for any applicant to make use of the E-Grants system. Applicants submitting paper applications are also required to include a DUNS number as their Universal Identifier. The policy does not apply to individuals applying for direct assistance under Federal programs.

5. *Responsibilities.*

a. *Agency Responsibilities.* Executive Branch departments and agencies:

(1) Must issue any needed direction to offices that award grants and cooperative agreements to implement this policy.

(2) Shall also direct recipients to initiate actions to obtain a DUNS number. The number is easily obtained by telephone or via the Internet (*http://www.dunandbradstreet.com*).

b. *OMB Responsibilities.* The Office of Management and Budget will update this policy letter as needed, based on recommendations from interagency work groups.

6. *Information Contact.* Direct any questions regarding this policy directive to Sandra Swab, OFFM, 202–395–5642 (direct) or 202–395–3993 (main office).

7. *Effective Date.* The policy directive is effective 30 days after issuance. All implementing actions other than regulatory revisions must be completed by the Executive departments and agencies within 6 months of issuance, and no later than October 1, 2003, when applicants and grantees must begin using the Universal Identifier.

Date:

Controller

[FR Doc. 02–27542 Filed 10–29–02; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Financial Management; Proposed Policy on Common Summary Report of Inventions

AGENCY: Office of Management and Budget (OMB).

ACTION: Notice of proposed policy issuance directive on standard data elements for a common summary report of inventions.

SUMMARY: OMB's Office of Federal Financial Management (OFFM) proposes to issue a policy directive to establish standard data elements and an interactive Internet web form of these elements to facilitate the submittal of a summary report of inventions. The purpose of a single interactive Internet web form is to have a common government-wide system for this report instead of the numerous, agency-unique summary invention reporting forms currently used by the Federal agencies. An interagency work group developed the data elements as part of the implementation of the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107). Consistent with the purposes of that Act, a single common web form will simplify and streamline this reporting process.

DATES: All comments on this proposal should be in writing, and must be received by December 30, 2002.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail sent through the U. S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Electronic mail comments may be submitted to *ghatch@omb.eop.gov*. Please include ''Invention Reporting Comments'' in the subject line of the message. If including the comments as an attachment to the e-mail, identify the attachment with ''Invention Reporting Comments.'' Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to (202) 395–4915. Comments may be mailed to Garrett Hatch, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Garrett Hatch, Office of Federal Financial Management, Office of Management and Budget, at 202–395–0786 (direct) or 202–395–3993 (main office) and e-mail: *ghatch@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: This notice proposes, by way of a policy directive, to establish a single interactive Internet web form to submit the summary (interim or final) report of inventions conceived or first actually reduced to practice during the term of an award as required by the Bayh-Dole Act [35 U.S.C. Section 206; 37 CFR Section 401.5(f)(1) and (3)]. The Federal agencies plan to locate this interactive web form on the Interagency Edison extramural invention reporting system called iEdison (*http://iedison.gov*). iEdison is an Internet-based system devoted to Bayh-Dole Act reporting compliance. It was selected because it is currently used by 16 Federal agencies for invention reporting and tracking. To meet reporting requirements, award recipients will be able to complete the web form on the iEdison web site, print

a copy, sign, and fax or mail the form to the awarding agency. The use of an electronic signature is not included in this implementation since a government-wide standard for electronic signature has not yet been defined.

Implementation of a common government-wide web form for the summary report of inventions is one outcome of the Federal agencies' streamlining and simplification efforts mandated by the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107). Although the standard data elements and web form were developed for financial assistance recipients, the elements are equally applicable to contractors, and contractors can use the web form as an interim or final summary report of inventions, if an agency chooses.

The standard data elements, *i.e.*, data dictionary, and a template of the proposed web form are attached to this notice. The Federal agencies that require a summary invention report believe the proposed data elements are the essential elements needed for such a report. During an informal commenting period, several organizations recommended that a summary report of inventions be required only if there were inventions to report.

However, while the decision to request such reports is optional, most agencies believe that a final report (either positive or negative) is the most efficient way to provide some assurance that the recipient has given appropriate attention to the reporting of inventions. Often times a significant number of inventions are reported when recipients are prompted to complete a final report of inventions prior to close-out. The experience of several agencies has also shown that recipients pay more attention to invention reporting obligations if they are required to indicate if no inventions were made under the award.

We welcome your comments on the standard data elements and the proposed interactive Internet web form. If you receive funds from the Federal Government for research and development, or expect to receive funds in the future, questions that you may wish to address include:

- Do you agree that these data elements represent the minimum set needed? Would you add or delete any elements? If you recommend adding or deleting any elements, please explain.
- Do the data element definitions clearly describe what is required? If not, please provide suggested changes.
- Would you be able to access the iEdison system to complete the web form? Although the interactive Internet web form will not be fully developed until the standard data elements are approved, we welcome suggestions on how to make it more ''user friendly''.

Dated: October 17, 2002.

Joseph L. Kull,

Deputy Controller.

Proposed OMB Policy Directive

To the Heads of Executive Departments and Establishments

Subject: Standards for Summary Report of Inventions.

(1) *Purpose.* This policy directive establishes a single interactive Internet web form to be used by recipients for their summary report of inventions if such reports are required by the awarding agency.

(2) *Authority.* This policy directive is part of the implementation of the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107).

(3) *Background.* The Federal Financial Assistance Management Improvement Act of 1999 requires the Office of Management and Budget (OMB) to direct, coordinate, and assist Executive Branch departments and agencies in establishing an interagency process to streamline and simplify Federal financial assistance procedures for non-Federal entities.

It also required each executive agency to develop, submit to the Congress, and implement a plan for the streamlining and simplification effort. Twenty-six Executive Branch agencies jointly submitted a plan to the Congress in May 2001, as the Act required. The plan described the interagency process through which the agencies would review current policies and practices and seek to streamline and simplify them. The plan also identified substantive areas in which the interagency work groups had begun their review and simplification efforts.

One area identified by the Post-Award Work Group was the development of common data elements for a summary report of inventions. The interagency work group recognized that the development of a common set of information requirements, and adoption of a common web form for this report would reduce the reporting burden on recipients that receive Federal funds for research and development.

(4) *Requirement.* The Bayh-Dole Act requires that any invention conceived or first actually reduced to practice using funds obtained as part of a Federal funding agreement must be reported to the Federal awarding agency [35 U.S.C. Section 202; 37 CFR Section 401.14]. A provision of the law permits agencies, at their option, to require recipients to submit a summary report of inventions, either on an interim basis, or prior to the close-out of a funding agreement listing all subject inventions or stating that there were none [37 CFR Section 401.5(f)(1) & (f)(3)]. Most of the large Federal agencies that fund research and development require at least a final summary report of inventions.

(5) *Policy.* If a Federal agency requires a summary report of inventions prior to the close-out of a grant or a cooperative agreement, the agency must use the common web form and must specify in the award agreement or in the agency's policy directives that recipients must use the common interactive Internet web form on the iEdison Web site at *http://iedison.gov* for such reports.

(6) *Responsibilities.*

a. Agency Responsibilities. Executive Branch departments and agencies:

(1) Must issue any needed direction to offices that award grants and cooperative agreements to implement this policy. Agencies should also direct recipients to complete all the required information on the web form and any optional information required by the agency, print and sign the form, and mail or fax it to the appropriate Federal official.

(2) May request exceptions from this OFFM policy letter for any summary invention reporting that deviates from the government-wide invention reporting system.

b. OMB Responsibilities. OMB will update this policy letter as needed, based on recommendations from interagency work groups.

(7) *Information Contact.* Direct any questions regarding this policy directive to Garrett Hatch, OFFM, 202–395–0786 (direct) or 202–395–3993 (main office).

(8) *Effective Date.* The policy directive is effective 30 days after issuance. All implementing actions other than regulatory revisions must be completed by the Executive departments and agencies within 6 months of issuance; regulatory revisions must be completed within 12 months.

Date:
Controller

Attachments:

1. Data Dictionary for Common Summary Report of Inventions
2. Summary Report of Inventions Web Form Template

Data Dictionary—Common Summary Report of Inventions

The data elements that are represented allow for the summary reporting of all inventions and patents

that have been made using Federal funds during the term of a Federal funding agreement. The data elements allow for the identification of the agency source of funding, the reporting period, and whether the report is an interim, *i.e.*, for a funding period of fixed duration within a multi-year award, or a final report. Any number of inventions can be reported, including the invention title, inventors' names, and invention docketing numbers and the date upon which the invention was formally reported to the funding agency consistent with Bayh-Dole regulations. A similar set of information is available for summary reporting of patent applications that relate to each invention. Finally, the name, title, and signature of the grantee organization official authorized to submit the information is included. The signature of the official is not captured as part of the interactive form. Instead, once the form is completed and printed, the official can sign the printed form prior to either faxing or sending to the awarding agency via U.S. Postal Service, in accordance with the agency's implementing instructions.

Group	Description	Required?
Document	The Document group represents data elements relevant to the entire Summary Report of Inventions.	Required.
Invention	The Invention group identifies the data elements relevant to one invention listed on this Summary Report of Inventions.	Required. May list more than one.
Inventor	The Inventor group identifies the data elements relevant to one inventor for one invention listed on this Summary Report of Inventions.	Required. May list more than one.
Patent	The Patent group identifies the data elements relevant to one patent listed on this Summary Report of Inventions.	Optional. May list more than one.
Patent Inventor	The Patent Inventor group identifies the data elements relevant to one inventor for one entry patent listed on this Summary Report of Inventions.	At least one required per Patent group. May list more than one.

Tag	Length	Description	Required?	Group
Report Type Code	1	Code specifying the type of report: I=Interim. F=Final.	Required. Identify one only	Document.
Report Period Start Date	8	Month, date, and year that the reporting period starts. Format is MMDDYYYY.	Required	Document.
Report Period End Date	8	Month, date, and year that the reporting period ends. Format is MMDDYYYY.	Required. Identify one only	Document.
Subject Inventions Number	3	Number of subject inventions conceived of or first actually reduced to practice during the entire award period. Valid values are 0–999.	Required. Identify one only	Document.
Subject Inventions Reported	1	Were all the subject inventions reported? Y=Yes. N=No.	Required. Identify one only	Document.
Prime Awardee Name	100	Name of the organization that has been awarded the grant, cooperative agreement, or contract.	Required. Identify one only	Document.
Prime Award Number	30	Agency-specific number assigned to the grant, cooperative agreement, or contract award.	Required. Identify one only	Document.
Awarding Agency	100	Agency that awarded the grant, cooperative agreement, or award.	Required. Identify one only	Document.
Subcontractor Name	100	The name of the organization submitting this Summary Invention Report, if different from the Prime Awardee Name.	Optional. Identify one only	Document.
Subcontractor DUNS	15	The DUNS number of the subcontractor submitting this Summary Invention Report.	Required if Subcontractor Name is present. Identify one only.	Document.
Subcontract Number	30	Contract number assigned to the subcontractor in the context of this grant, cooperative agreement, or contract.	Required if Subcontractor Name is present. Identify one only.	Document.
Signatory Prefix	15	Prefix of the organizational official authorized to submit this report.	Optional. Identify one only	Document.
Signatory First Name	30	First name of the organizational official authorized to submit this report.	Required. Identify one only	Document.

Tag	Length	Description	Required?	Group
Signatory Middle Initial	1	Middle initial of the organizational official authorized to submit this report.	Optional. Identify one only	Document.
Signatory Last Name	30	Last name of the organizational official authorized to submit this report.	Required. Identify one only	Document.
Signatory Suffix	5	Suffix of the organizational official authorized to submit this report.	Optional. Identify one only	Document.
Signatory Title	240	Position title of the organizational official authorized to submit this report.	Required. Identify one only	Document.
Report Submission Date	8	Month, date, and year that this report is submitted to the Federal Government. Format is MMDDYYYY.	Required. Identify one only	Document.
Invention Title	300	Title of the subject invention	Required. Identify one only	Invention.
Invention Docket Number	25	Number by which the grantee/contractor tracks the subject invention.	Optional. Identify one only	Invention.
Invention Report Date	8	Month, date, and year that the subject invention is reported to the Federal Government. Format is MMDDYYYY.	Optional. Identify one only	Invention.
Agency Invention Number	25	Number by which the Awarding Agency tracks the subject invention.	Optional. Identify one only	Invention
Invention Reported By Code	1	Code specifying who reported the subject invention:. A=Awardee. S=Subcontractor.	Optional. Identify one only	Invention.
Inventor First Name	30	First name of the inventor of the subject invention.	Required. Identify one only	Inventor.
Inventor Middle Initial	1	Middle initial of the inventor of the subject invention.	Optional. Identify one only	Inventor.
Inventor Last Name	30	Last name of the inventor of the subject invention.	Required. Identify one only	Inventor.
Patent Title	300	Title of the subject patent	Required. Identify one only	Patent.
Patent ID Number	25	The patent number or patent application serial number.	Required. Identify one only	Patent.
Patent Filing Or Issue Date	8	Month, date, and year that the patent application was filed or the patent was issued. Format is MMDDYYYY.	Required. Identify one only	Patent.
Patent Docket Number	25	Number by which the grantee/contractor tracks the subject patent.	Optional. Identify one only	Patent.
Patent Reported By Code	1	Code specifying who reported the subject patent: A=Awardee. S=Subcontractor.	Optional. Identify one only	Patent.
US Application Filed	1	Has a U.S. patent application been filed? Y=Yes N=No	Required. Identify one only	Patent.
Foreign Application Filed	1	Has a foreign patent application been filed? Y=Yes N=No	Required. Identify one only	Patent.
Foreign Countries Indicated	1	For foreign filings, have all countries been noted in the report?. Y=Yes N=No	Required if Foreign Application Filed is Yes. Identify one only.	Patent.
Patent Inventor First Name	30	First name of the inventor of the subject patent.	Required. Identify one only	Patent Inventor.
Patent Inventor Middle Initial	1	Middle initial of the inventor of the subject patent.	Optional. Identify one only	Patent Inventor.
Patent Inventor Last Name	30	Last name of the inventor of the subject patent.	Required. Identify one only	Patent Inventor

BILLING CODE 3110–01–P

Summary Report of Inventions Template

Report for Award No: REQUIRED TEXT

Awardee Organization Name: REQUIRED TEXT

Awarding Agency: REQUIRED FROM PICKLIST ▽

Subcontractor Name (if applicable*): REQUIRED TEXT

**Subcontractor Reports are required for R&D performed under contracts, purchase orders, and subcontract agreements within all awards. See contract or grant award documents when in doubt.*

Subcontract Number: REQUIRED

Reporting Period

Starting Date: mm/dd/yyyy Ending Date: mm/dd/yyyy

Type of Report: Interim o Final o

If final report, please answer the following:

Required from Picklist

Number of inventions during the total period of award: ▽

Were all the subject invention(s) reported? Yes o No o

[Implementation Note: If Number of inventions = 0, no further information will be required.]

Subject Invention-Related Information

Title of Subject Invention REQUIRED TEXT

Docket No. optional DOE "S" No. REQUIRED (if applicable)

Reported by: Prime Contractor o Subcontractor o

Subject Inventors Names:

Last	First	Middle I.
AT LEAST ONE REQUIRED		

Date Reported: mm/dd/yyyy Link to add Additional Invention

[Implementation Note: The "Link to add Additional Invention" shown above will allow the grantee/contractor/subcontractor to report on all inventions.]

Patent-Related Information

Title of Patent/Application [REQUIRED TEXT]

Patent Identifying No. [application #, serial #...]

Docket No. [optional]

Reported by: Prime Contractor o Subcontractor o

Patent Inventors Names:

Last	First	Middle I.
AT LEAST ONE REQUIRED		

Date Reported: [mm/dd/yyyy] Link to add Additional Patent

Please Note: All U.S. and foreign filings must be included in the report. For foreign filings, all countries must be included in the report.

[Implementation Note: The "Link to add additional Patent" shown above will allow the grantee/Contractor/subcontractor to report on all patents: U.S. AND Foreign. For each patent, the format Of the Patent Identifying No. will identify if the patent application is U.S. or Foreign]

Grantee/Contractor Organization Official Authorized to Submit the Report

Name:

Pfx	Last	First	Mid Init.	Sfx
	REQUIRED	REQUIRED		

Title:

[REQUIRED TEXT]

Signature:

REQUIRED

Date Report Submitted: [mm/dd/yyyy]

[FR Doc. 02–27543 Filed 10–29–02; 8:45 am]
BILLING CODE 3110–01–C

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

Collection title: Evidence of Marital Relationship—Living with Requirements.

Form(s) submitted: G–124, G–124a, G–237, G–238, and G–238a.

OMB Number: 3220–0021.

Expiration date of current OMB clearance: 1/31/2003.

Type of request: Extension of a currently approved collection.

Respondents: Individuals or households, state, local or tribal government.

Estimated annual number of respondents: 1,100.

Total annual responses: 1,100.

Total annual reporting hours: 196.

Collection description: Under the RRA, to obtain a benefit as a spouse of an employee annuitant or as the widow(er) of the deceased employee, applicants must submit information to be used in determining if they meet the marriage requirements for such benefits. The collection obtains information supporting claimed common-law marriage, termination of previous marriages and residency requirements.

FOR FURTHER INFORMATION CONTACT: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363).

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–27598 Filed 10–29–02; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46674; File No. SR–OPRA–2002–05]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment to OPRA Plan Regarding Policies for Device-Based Fees

October 17, 2002.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 4, 2002, the Options Price Reporting Authority (''OPRA'')[2] submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan''). The proposed OPRA Plan amendment would supplement OPRA's form of Professional Subscriber Agreement with a new document entitled ''Policies With Respect To Device-Based Fees'' (referred to in this filing as the ''Device-Based Fees Policies''). The Commission is publishing this notice to solicit comments from interested persons on the proposed OPRA Plan amendment.

I. Description and Purpose of the Amendment

The purpose of the proposed amendment to OPRA's national market system plan is to state in writing certain OPRA policies with respect to the way in which OPRA calculates ''device-based fees'' that are paid by Professional Subscribers.[3] The policies reflect existing OPRA practice, but OPRA has not previously reduced them to writing. OPRA has developed the Device-Based Fees Policies to make information with respect to its calculation of device-based fees more easily accessible to Professional Subscribers. The Device-Based Fees Policies address four subjects relating to device-based fees:

(a) The Use of ''User IDs'' as a Surrogate or Supplement for Devices for Purposes of Calculating Device-Based Fees

As the term ''device-based'' suggests, the basic method for calculating a Professional Subscriber's device-based fees is to determine the number of devices that the Professional Subscriber has that are capable of receiving OPRA information. However, OPRA permits Professional Subscribers to count ''User IDs'' as a surrogate or supplement for counting devices for purposes of calculating OPRA fees. A Professional Subscriber that wishes to count User IDs must comply with certain requirements, which are described in the Device-Based Fees Policies.

(b) The Manner in Which OPRA Bills for the Use of OPRA Data by Entities That Are Affiliated With Each Other

OPRA's policy is to permit a parent entity's status as a Professional Subscriber to encompass its wholly-owned subsidiaries. In all other situations OPRA's policy is to conduct its relationships with Professional Subscribers and other persons on an ''entity-by-entity'' basis, and not on a ''family of affiliates'' basis. The Device-Based Fees Policies describe two specific ways in which these policies may apply to the calculation of device-based fees. The first has to do with the aggregation of devices and/or User IDs across affiliated entities for purposes of determining the applicable device-based rate. The second relates to the availability of OPRA's member rate schedule for OPRA's Basic Service in a situation where either a parent entity is a member of an OPRA Exchange but its wholly-owned subsidiary is not (in this case, the member rate schedule is available for the parent and the subsidiary) or the parent entity is not a member of an OPRA Exchange but its

[1] 17 CFR 240.11Aa3–2.

[2] OPRA is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (Mar. 18, 1981). The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The five participants to the OPRA Plan that operate an options market are the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the International Securities Exchange LLC, the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc. The New York Stock Exchange, Inc. is a signatory to the OPRA Plan, but sold its options business to the CBOE in 1997. *See* Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

[3] In essence, an OPRA Professional Subscriber may pay fees for its receipt of OPRA data in one of three ways. The first two ways are available to a Professional Subscriber that enters into a Professional Subscriber Agreement directly with OPRA; such a Subscriber pays fees for the receipt of OPRA data directly to OPRA, with the fees calculated using either ''device-based'' rates (the subject of the Device-Based Fees Policies) or ''enterprise'' rates (rates that are calculated on the basis of the number of ''registered representatives'' that work for the Professional Subscriber, subject to a monthly minimum). The third way is available to a Professional Subscriber that enters into an agreement with an OPRA vendor in a form prescribed by or that is acceptable to OPRA. In that case, the Vendor pays ''usage-based'' fees to OPRA (fees based on the volume of usage of OPRA data through the Vendor's service) for the Professional Subscriber's use of OPRA information, and the Professional Subscriber pays fees to the Vendor under the financial arrangements that they establish.

wholly-owned subsidiary is (in this case, the member rate schedule is not available to either the parent or the subsidiary, although it would be available to the subsidiary if it entered into a separate Subscriber Agreement with OPRA in its own name).

(c) Policy With Respect to Devices and User IDs That Are Capable of Receiving OPRA Data From More Than One Source

The Device-Based Fees Policies state OPRA's policy with respect to devices and User IDs that are capable of receiving OPRA data from more than one source; in essence the policy is that OPRA does not require that more than one fee be paid with respect to any device or User ID that is capable of receiving OPRA information, even if the device or User ID is capable of receiving OPRA information from more than one source or ''service.''

(d) Professional Subscriber's Responsibility to Verify Invoices

The fourth subject addressed in the Device-Based Fees Policies is the responsibility of each Professional Subscriber to verify that the invoices it receives from OPRA are accurate, and particularly to verify that it is not being billed twice for the same device or User ID. The Device-Based Fees Policies state that OPRA's policy is to correct a current invoice if a Professional Subscriber informs OPRA that the invoice is not accurate, and to correct its records so that the inaccuracy does not continue to be reflected in future bills, but not to provide refunds or credits for a double billing or other inaccuracy for any period of time prior to the period covered by the Professional Subscriber's current invoice.

The text of the proposed new document regarding policies with respect to Device-Based Fees is set forth below.

* * * * *

Policies With Respect To Device-Based Fees

Professional Subscribers that enter into Professional Subscriber Agreements directly with OPRA pay fees for the use of OPRA information directly to OPRA. These fees may be calculated using either ''device-based'' rates or ''enterprise'' rates. (A Professional Subscriber that enters into a Subscriber Agreement with a Vendor does not pay fees directly to OPRA. Instead, the Vendor pays usage-based fees to OPRA for the Professional Subscriber's use of OPRA information, and the Professional Subscriber pays fees to the Vendor under the financial arrangements that they establish.) The OPRA policies described in this document relate to device-based fees.

As the term ''device-based'' suggests, the basic method for calculating a Professional Subscriber's device-based fees is to determine the number of devices that the Professional Subscriber has that are capable of receiving OPRA information. However, if a Professional Subscriber complies with the requirements described in the section of this document entitled ''System Requirements for Using User IDs to Calculate Device-based Fees,'' OPRA will permit the Professional Subscriber to count ''User IDs'' that are capable of receiving OPRA information as a surrogate for counting devices, and to pay fees based on the number of User IDs using the same *Fee Schedule for Professional Subscribers* that is used for device-based counts.

A Professional Subscriber cannot mix device-based counting and User ID-based counting at the same location, but a Professional Subscriber may use one type of counting at one location and the other at another location. If a Professional Subscriber uses both types of counting, OPRA will simply add the totals together for purposes of determining the Subscriber's monthly fee in accordance with the Fee Schedule.

Billing for Affiliates

OPRA's policy is to permit a parent entity to conduct business with OPRA on behalf of its wholly-owned subsidiaries as well as on its own behalf. In all other situations OPRA adheres to a general policy in its contract relationships with Professional Subscribers and other persons of conducting business on an ''entity-by-entity'' basis, and not on a ''family of affiliates'' basis. Thus, for example, OPRA would permit a wholly-owned subsidiary of a company that is a Professional Subscriber to receive OPRA information on the subsidiary's devices under the terms of the parent's Professional Subscriber Agreement, *i.e.*, without having a second Professional Subscriber Agreement in effect. But OPRA would require two entities that are ''sister'' affiliates of each other and that each wants to become a Professional Subscriber and to pay device-based fees to each sign a Professional Subscriber Agreement with OPRA.

This general policy is relevant to determinations of device-based fees in at least two respects:

- OPRA permits a parent entity to aggregate the devices and/or User IDs of its wholly-owned subsidiaries that are under the parent's Professional Subscriber Agreement with its own devices and/or User IDs for purposes of determining the applicable device-based rate, but does not permit any other aggregation of devices or User IDs—even by entities that are in other affiliate relationships with each other—for purposes of determining the applicable device-based rate.
- If a parent entity that has entered into a Professional Subscriber Agreement is entitled to use the ''Member'' rate schedule for OPRA's Basic Service (because it is a member or associate member in good standing of one of the OPRA Participant Exchanges), then the ''Member'' rate schedule will also be available to the parent's wholly-owned subsidiaries that are under the parent's Professional Subscriber Agreement. If a parent entity that has entered into a Professional Subscriber Agreement is not entitled to use the ''Member'' rate schedule, then the ''Member'' rate schedule would not be available to a wholly-owned subsidiary that is under the parent's Professional Subscriber Agreement even if the subsidiary is a member or associate member in good standing of one of the OPRA Participant Exchanges. (This might be a situation in which the subsidiary should enter into its own Professional Subscriber Agreement, since it would then be entitled to use the ''Member'' rate schedule.) Except in the case in which a parent entity is entitled to use the ''Member'' rate schedule for itself and its wholly-owned subsidiaries, the availability of the ''Member'' rate schedule to any entity may not be extended to any other entity, including any affiliate of the entity that is entitled to use the ''Member'' rate schedule.

System Requirements for Using User IDs to Calculate Device-Based Fees

If a Professional Subscriber wants to use User ID counts rather than device counts for purposes of determining device-based fees at a particular location, the system(s) that control User ID entitlement at the location must satisfy the following requirements:

- The system(s) must assign a unique User ID to each person who will have access to OPRA information and must be capable of maintaining, for audit purposes, a record of the names of all users with access to the network together with their associated user IDs and their respective entitlements.
- The system(s) must be configured to preclude simultaneous access by the same user ID from more than one terminal on the network.

• The system(s) must have the ability to generate reports for the location detailing those persons entitled to access OPRA information, and to retain these reports for a period of three years for audit purposes.

In addition, the Professional Subscriber must have a policy in place prohibiting the sharing of User IDs, and must have procedures in place to assure reasonable compliance with the policy.

If any of these requirements is not satisfied (*e.g.*, if the entitlement control system does not prohibit simultaneous access by the same User ID), device-based fees must be based on counting the devices that are capable of receiving OPRA information rather than on counting User IDs.

Counting Devices and User IDs

OPRA does not require that more than one fee be paid with respect to any device, or any User ID, that is capable of receiving OPRA information, even if the device or User ID is capable of receiving OPRA information from more than one source or ''service.'' Thus, for example, if a particular device is receiving data from both a Vendor A service and a Vendor B service, OPRA does not require that the Professional Subscriber pay two device-based fees for that device. Similarly, if a particular device is receiving data from both a Vendor A service and a datafeed controlled by the Professional Subscriber itself, OPRA does not require that the Professional Subscriber pay two device-based fees for that device.

Professional Subscriber's Responsibility to Verify Invoices

Each Professional Subscriber is responsible for verifying that the invoices it receives from OPRA are accurate. In particular, each Professional Subscriber is responsible for verifying that it is not being billed twice for the same device or User ID. OPRA invoices each Professional Subscriber that has elected to pay device-based fees based on information that OPRA receives from Vendors (with respect to devices and User IDs that are under Vendor control) and from the Professional Subscriber itself (with respect to devices and User IDs that are under the control of the Professional Subscriber). It can be difficult for OPRA to recognize that a device or User ID reported as receiving OPRA information by two different Vendors, or by a Vendor and the Professional Subscriber, is in fact the same device or User ID.

If a Professional Subscriber informs OPRA that a current OPRA invoice double bills for a particular device or User ID or is otherwise inaccurate, OPRA will correct the current invoice and its records so that the double billing or other inaccuracy does not continue. However, OPRA's policy is to not provide refunds or credits for a double billing or other inaccuracy for any period of time prior to the period covered by the Professional Subscriber's current invoice.

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II. Implementation of the OPRA Plan Amendment

Pursuant to paragraph (c)(3)(i) of Rule 11Aa3–2 under the Act,[4] OPRA designates this amendment as establishing or changing a fee or other charge collected on behalf of all of the OPRA participants in connection with access to or use of OPRA facilities, thereby qualifying for effectiveness upon filing. The Commission may summarily abrogate the amendment within sixty days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3–2(c)(2) under the Act,[5] if it appears to the Commission that such action is necessary or appropriate in the public interest; for the protection of investors and the maintenance of fair and orderly markets; to remove impediments to, and perfect the mechanisms of, a national market system; or otherwise in furtherance of the purposes of the Act. Further, OPRA intends to send a copy of the Policies to all current Professional Subscribers with the next monthly invoices that are sent out by OPRA following this filing, and to add the Policies to the package of materials that it supplies to vendors for distribution to persons intending to sign Professional Subscriber Agreements with OPRA. In addition, as soon as practicable OPRA intends to post a copy of the Policies on its website *(www.opradata.com).*

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment 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, and all written statements with respect to the proposed OPRA Plan amendment that are filed with the Commission, and all written communications relating to the proposed OPRA Plan amendment between the Commission and any person, other than those 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 the filing also will be available at the principal offices of OPRA. All submissions should refer to File No. SR–OPRA–2002–05 and should be submitted by November 20, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–P

[4] 17 CFR 240.11Aa3–2(c)(3)(i).

[5] 17 CFR 240.11Aa3–2(c)(2).

[6] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46718; File No. SR–CBOE–2002–48]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Accelerated Approval of Proposed Rule Change Relating to Amendments to Its Constitution and Rules Pertaining to the Governance of the Exchange

October 24, 2002.

On August 26, 2002, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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 amend CBOE's Constitution and Rules relating to governance of the Exchange. The principal governance proposal increases the public representation on the Exchange's Board of Directors (''Board'') and three committees of the Board so that the Board and these three committees will be balanced between industry (member) and public directors. The Exchange also proposed to codify in its Constitution establishment of the Audit Committee, Compensation Committee, and Floor Directors Committee of the Board. It also proposed to amend its Constitution to clarify that the authority of the Vice Chairman of the Board to coordinate the activities of Exchange committees does not extend to the Executive, Audit or Compensation Committees. Finally, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

CBOE proposed certain ''housekeeping'' amendments to its Constitution and Rules.

The proposed rule change was published for comment in the **Federal Register** on October 2, 2002.[3] The Commission received no comments on the proposal. This order approves the proposed rule change on an accelerated basis.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange[4] and, in particular, the requirements of Section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with the requirement of Section 6(b)(5)[6] because it is designed to promote just and equitable principles of trade and to protect investors and the public interest by increasing public representation on the Exchange's Board and certain committees so that the Board and those committees will be balanced between industry (member) and public directors.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after notice of publication in the **Federal Register**, in light of the absence of adverse comments on the proposed rule change. Acceleration of this approval will permit the CBOE to implement the changes without delay.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–CBOE–2002–48) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–P

[3] *See* Securities Exchange Act Release No. 46546 (September 24, 2002), 67 FR 61934.

[4] In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46706; File No. SR–Phlx–2002–52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Extend the PACE Price Improvement and Order Execution and Price Protection Pilot Programs Until March 31, 2003

October 22, 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 September 26, 2002 the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed a proposed rule change with the Securities and Exchange Commission (''SEC'' or ''Commission''). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to extend two PACE (Philadelphia Stock Exchange Automated Communication and Execution System)[5] pilot programs that were introduced with the advent of decimal pricing in the securities industry.[6] The first PACE pilot program, which is found in Supplementary Material .07(c)(i) to Rule 229, consists of an automated price improvement feature that incorporates a percentage of the spread between the bid and the offer (the ''price improvement pilot program''). It has been in effect since January 30, 2001.[7]

The second PACE pilot program, which is found in Supplementary Material .05 and .07(c)(ii) to Rule 229, incorporates immediate execution of certain market orders through the Public Order Exposure System (''POES'') and mandatory double-up/double-down price protection (the ''order execution and price protection pilot program''). It has been in effect since August 25, 2000.[8]

The Exchange is not making any substantive changes to the price improvement or the order execution and price protection pilot programs that have previously been authorized by the Commission, with the exception of amending language that indicates that the pilot programs are extended through March 31, 2003.[9]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6). The Exchange has requested, and the Commission agrees, to waive the pre-filing notice required by Rule 19b–4(f)(6).

[5] PACE is the Exchange's automated order routing, delivery, execution and reporting system for equities.

[6] The Exchange is extending both pilot programs pursuant to a telephone call on September 19, 2002, between Joseph Morra, Division of Market Regulation, Commission, and Jurij Trypupenko, Phlx. The Commission has noticed the Exchange's proposed rule change to make the pilot programs permanent, but has not yet approved the Exchange's request to make the pilot programs permanent. *See* Securities Exchange Act Release No. 45580 (March 18, 2002), 67 FR 13399 (March 22, 2002)(SR–Phlx–2002–18).

[7] The price improvement pilot program was established in SR–Phlx–2001–12. *See* Securities Exchange Act Release No. 43901 (January 30, 2001), 66 FR 8988 (February 5, 2001). It was extended several times, currently through September 30, 2002. *See* Securities Exchange Act Release Nos. 44672 (August 9, 2001), 66 FR 43285 (August 17, 2001)(SR–Phlx–2001–67); 45078 (November 19, 2001), 66 FR 59293 (November 27, 2001) (SR–Phlx–2001–101); 45284 (January 15, 2002), 67 FR 3253 (January 23, 2002)(SR–Phlx–2002–01); and 45889 (May 7, 2002), 67 FR 32076 (May 13, 2002) (SR–Phlx–2002–28).

[8] The order execution and price protection pilot program was established in SR–Phlx–00–08. *See* Securities Exchange Act Release No. 43206 (August 25, 2000), 65 FR 53250 (September 1, 2000). It was extended several times, currently through September 30, 2002. *See* Securities Exchange Act Release Nos. 44185 (April 16, 2001), 66 FR 20511 (April 23, 2001)(SR–Phlx–2001–20); 44818 (September 19, 2001), 66 FR 49240 (September 26, 2001)(SR–Phlx–2001–81); 45079 (November 19, 2001), 66 FR 59292 (November 27, 2001)(SR–Phlx–2001–102); 45295 (January 16, 2002), 67 FR 3624 (January 24, 2002) (SR–Phlx–2002–03); and 45889 (May 7, 2002), 67 FR 32076 (May 13, 2002)(SR–Phlx–2002–28).

[9] Any proposed language changes other than the new date of extension are technical, non-substantive amendments to conform the language of the pilots and clarify that trading is in decimals only and the extension date applies to both pilots. The text of the proposed rule change is available at the Exchange and at the Commission.

the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend two PACE pilot programs—the Exchange's price improvement pilot program and the Exchange's order execution and price protection pilot program.[10]

Price Improvement Pilot Program. Price improvement statistics are often used by order floor providers as a measure of both a specialist's and an Exchange's execution quality. Broker-dealers are subject to the fiduciary duty of best execution respecting their order routing decisions. The Exchange has long sought to encourage the development of features, and specialist participation in such features, that contribute to higher price improvement figures and thus encourage better execution quality for the Exchange. The automatic price improvement pilot based on a percentage of the spread between the bid and offer is intended to, and has enabled, price improvement greater than one penny.[11]

The automatic price improvement pilot program is found in Supplementary Material .07(c)(i) to Rule 229, such that, for equities trading on the PACE System, the price improvement feature automatically executes eligible orders at a price better than the PACE Quote. A specialist may choose to provide automatic price improvement in the form of a percentage of the PACE Quote when an order is received, up to 50%, rounded to the nearest penny. This ''percentage price improvement'' feature would be available where the PACE Quote is $.02 or greater, in a particular security to all customers. For example, where the PACE Quote is $10.00–$10.50 (a spread of $.50), a specialist electing this feature and choosing a percentage of 30 would provide automatic price improvement of $.15 to an eligible PACE order; thus, an incoming eligible sell order would receive an execution price of $10.15, whereas, absent automatic price improvement, it would be automatically executed at $10.00. If the specialist in this example chooses a percentage of 25, the resulting $.125 (12½ cents) would be rounded down to 12 cents.

Although participation in automatic price improvement (as well as PACE as a whole) is voluntary, the order execution and price protection pilot program requires that if specialists do not provide automatic price improvement, in certain situations they must manually provide double-up/double-down price protection.

Order Execution and Price Protection Pilot Program. The order execution portion of the pilot program is found in Supplementary Material .05 to Rule 229, which establishes that market orders up to a specified number of shares will be ''stopped'' at the PACE Quote at time of entry into the system and delayed up to thirty seconds to allow for price improvement. However, if the PACE Quote at time of order entry reflects a point spread (the difference between the best bid and offer) of $.05 or less, that order will be executed immediately.

The double-up/double-down price protection portion of the pilot program is found in Supplementary Material .07(c)(ii) to Rule 229, which establishes that if a specialist chooses not to provide automatic price improvement to all customers and all eligible market orders in an equity trading on the PACE System, the specialist has to provide manual double-up/double-down price protection in any instance where the bid/ask of the PACE Quote is $.05 or greater. Double-up/double-down is defined in Supplementary Material .07(c)(ii) as a trade that would be at least $.10 (up or down) from the last regular way sale on the primary market, or, $.10 from the regular way sale that was the previous intra-day change on the primary market.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[12] in general, and furthers the objectives of section 6(b)(5),[13] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest by extending the pilot programs that provide for automatic price improvement and automatic execution of certain market orders and mandatory double-up/double-down price protection for equities traded over the PACE System.[14]

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

The Exchange did not receive any written comments on the proposed rule change.

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) of the Act[15] and Rule 19b–4(f)(6)[16] thereunder because the 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 the proposed rule change was filed, or such shorter time as the Commission may designate. At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act,[17] 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.

The Exchange has requested that the Commission waive the 30-day operative date. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will permit the Exchange to continue the existing pilot programs without delay. Thus, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[18] of the Act and subparagraph (f)(6) of Rule 19b–4.[19] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is

[10] *See* Securities Exchange Act Release Nos. 43901 (January 30, 2001), 66 FR 8988 (February 5, 2001) (SR–Phlx–2001–12) and 43206 (August 25, 2000), 65 FR 53250 (September 1, 2000)(SR–Phlx–00–08).

[11] Prior to the automatic price improvement pilot program, specialists could choose to provide automatic price improvement of $.01 for equities trading on the PACE System (where the PACE Quote—the NBBO—was either $.05 or greater, or $.03 or greater). *See* Securities Exchange Act Release No. 43206 (August 25, 2000), 65 FR 53250 (September 1, 2000) (SR–Phlx–00–08).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 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).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4.

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written 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 the File No. SR–Phlx–2002–52 and should be submitted by November 20, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27537 Filed 10–29–02; 8:45 am]

BILLING CODE 8010–01–P

[20] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–13582]

National Preparedness for Response Exercise Program (PREP)

AGENCY: Coast Guard, DOT.

ACTION: Notice; request for public comments on PREP triennial exercise schedule for 2003, 2004, and 2005.

SUMMARY: The Coast Guard, the Research and Special Programs Administration, the Environmental Protection Agency and the Minerals Management Service, in concert with representatives from various State governments, industry, environmental interest groups, and the general public, developed the Preparedness for Response Exercise Program (PREP) Guidelines to reflect the consensus agreement of the entire oil spill response community. This notice announces the PREP triennial cycle, 2003–2005, requests comments from the public, and requests industry participants to volunteer for scheduled PREP Area exercises.

DATES: Comments and related material must reach the Docket Management Facility on or before December 30, 2002.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, (USCG–2002–13582), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, or need general information regarding the PREP Program and the schedule, contact Mr. Robert Pond, Office of Response, Plans and Preparedness Division (G–MOR–2), U.S. Coast Guard Headquarters, telephone 202–267–6603, fax 202–267–4065 or e-mail *rpond@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION: The PREP Area exercise schedule and exercise design manuals are available on the Internet at *http://www.uscg.mil/hq/nsfcc/nsfweb/.* To obtain a hard copy of the exercise design manual, contact Ms. Melanie Barber at the Research and Special Programs Administration, Office of Pipeline Safety, at 202–366–4560. The 2002 PREP Guidelines booklet is available at no cost on the Internet at *http://www.uscg.mil/hq/nsfcc/nsfweb/* or by writing or faxing the TASC DEPT Warehouse, 33141Q 75th Avenue, Landover, MD 20785, facsimile: 301–386–5394. The stock number of the manual is USCG–X0241. Please indicate the quantity when ordering. Quantities are limited to 10 per order.

Request for Comments

We encourage you to participate by submitting comments and related material. If you do so, please include your name and address, identify the docket number [USCG–2002–13582], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this triennial exercise schedule in view of them.

Background and Purpose

In 1994, the Coast Guard (USCG) and the Research and Special Programs Administration (RSPA) of the Department of Transportation, the U.S. Environmental Protection Agency (U.S. EPA), and the Minerals Management Service (MMS) of the Department of Interior, coordinated the development of the National Preparedness for Response Exercise Program (PREP) Guidelines to provide guidelines for compliance with the Oil Pollution Act of 1990 (OPA 90) pollution response exercise requirements (33 U.S.C. 1321(j)). The guiding principles for PREP distinguish between internal and external exercises. Internal exercises are conducted within the plan holder's organization. External exercises extend beyond the plan holder's organization to involve other members of the response community. External exercises are separated into two categories: (1) Area exercises, and (2) Government-initiated unannounced exercises. These exercises are designed to evaluate the entire response

mechanism in a given area to ensure adequate pollution response preparedness.

Since 1994, the USCG, U.S. EPA, MMS, and RSPA's Office of Pipeline Safety (OPS) have published a triennial schedule of Area exercises. In short, the Area exercises involve the entire response community (Federal, State, local, and industry participants) and therefore, require more extensive planning than other oil spill response exercises. The PREP Guidelines describe all of these exercises in more detail. This notice announces the next triennial schedule of Area exercises. If a company wants to volunteer for an Area exercise, a company representative may call either the Coast Guard or EPA On-Scene Coordinator (OSC) where the exercise is scheduled.

The following table is the PREP schedule for calendar years 2003, 2004, and 2005.

PREP SCHEDULE—GOVERNMENT-LED AREA EXERCISES

Area	Agency	Date/Qtr[1]	Participant
Calendar Year 2003			
Florida Panhandle (MSO Mobile)	CG	1	
SE Alaska (MSO Juneau)	CG	2	
Philadelphia, PA (MSO Philadelphia)	CG	3	
Region II RCP or Caribbean (EPA Region II)	EPA	3	
Portland, ME (MSO Portland)	CG	4	
Buffalo, NY (MSO Buffalo)	CG	4	
Calendar Year 2004			
SF/LA/LB/San Diego (MSO San Francisco, MSO Los Angeles/Long Beach & MSO San Diego).	CG SONS[2]	1	
Prince William Sound (MSO Valdez)	CG	2	
Charleston, SC (MSO Charleston)	CG	2	
South Texas Coast (MSO Corpus Christi)	CG	3	
Duluth-Superior (MSO Duluth)	CG	3	
Guam (MSO Guam)	CG	4	
Region I RCP (EPA Region I)	EPA	4	
Calendar Year 2005			
Virginia Coastal (MSO Hampton Roads)	CG	2	
Houston-Galveston (MSO Houston)	CG	2	
Alabama (MSO Mobile)	CG	3	
Region V RCP (EPA Region V)	EPA	3	
Providence (MSO Providence)	CG	4	
Western Alaska (MSO Anchorage)	CG	4	

[1] Quarters: 1 (January-March); 2 (April-June); 3 (July-September); 4 (October-December).
[2] SONS: Spill of National Significance.

PREP SCHEDULE—INDUSTRY-LED AREA EXERCISES

Area	Date/Qtr[1]	Participant
Calendar Year 2003		
Region IX RCP (EPA Region IX)	1	
Cleveland, OH (MSO Cleveland)	1	
Detroit (MSO Detroit)	2	
Jacksonville (MSO Jacksonville)	2	
New Orleans (MSO New Orleans)	2	
Northwest Area—Portland (MSO Portland)	2	
Region III RCP (EPA Region III)	3	
North Coast (CA) (MSO San Francisco)	3	
Caribbean Area (MSO San Juan)	3	
Western Lake Erie (MSO Toledo)	3	
Region VI RCP (EPA Region VI)	4	
Northern Marianas—Saipan (MSO Saipan)	4	
Calendar Year 2004		
Region IV RCP (EPA Region IV)	1	
New York, NY (Activities NY)	1	
Maryland Coastal (MSO Baltimore)	2	
Chicago, IL (MSO Chicago)	2	
Morgan City (MSO Morgan City)	2	
Eastern Wisconsin (MSO Milwaukee)	3	
Long Island Sound (MSO Long Island)	3	
Northwest—Puget Sound (MSO Puget Sound)	3	
Savannah (MSO Savannah)	3	
Region VII RCP (EPA Region VII)	4	

PREP SCHEDULE—INDUSTRY-LED AREA EXERCISES—Continued

Area	Date/Qtr[1]	Participant
Calendar Year 2005		
Region VIII (EPA Region VIII)	1	
Boston (MSO Boston)	1	
Buffalo (MSO Buffalo)	2	
Hawaii Islands (MSO Honolulu)	2	
South LA/LB	2	
South Florida (MSO Miami)	2	
S. North Carolina (MSO Wilmington)	3	
Region X or EPA Alaska (EPA Region X)	3	
SW LA/SE Texas (MSO Port Arthur)	3	
San Diego (MSO San Diego)	3	
Tampa (MSO Tampa)	4	
Sault Ste. Marie (MSO Sault Ste. Marie)	4	

[1] Quarters: 1 (January-March); 2 (April-June); 3 (July-September); 4 (October-December).

Dated: October 15, 2002.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security & Environmental Protection.

[FR Doc. 02–27610 Filed 10–29–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Cass and Crow Wing Counties, Minnesota

AGENCY: Federal Highway Administration (FHWA), DOT

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for proposed highway improvements to Trunk Highway (TH) 371 from the intersection of TH 371 and Crow Wing County Road 18 in Nisswa to the intersection of TH 371 and Cass County Road 42 in Pine River, a distance of approximately 16.0 miles, in Cass and Crow Wing Counties, Minnesota.

FOR FURTHER INFORMATION CONTACT: Cheryl Martin, Federal Highway Administration, Galtier Plaza, 380 Jackson Street, Suite 500, St. Paul, Minnesota 55101, Telephone (651) 291–6120; or Tony Hughes, Project Manager, Minnesota Department of Transportation—District 3, 1991 Industrial Park Road, Baxter, Minnesota 56425, Telephone (218) 828–2465; (651) 296–9930 TTY.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation (Mn/DOT), will prepare an EIS on a proposal to reconstruct TH 371 from the intersection of TH 371 and Crow Wing County Road 18 in Nisswa to the intersection of TH 371 and Cass County Road 42 in Pine River, a distance of approximately 16.0 miles, in Crow Wing and Cass Counties, Minnesota. The proposed action is being considered to address future transportation demand, safety problems, lack of access control, and design deficiencies.

The EIS will evaluate the social, economic, transportation and environmental impacts of alternatives, including: (1) No-Build and (2) variations of ''Build'' alternatives involving reconstruction and capacity expansion of TH 371 along the existing highway corridor, including individual or combined bypass alignments around the Cities of Pequot Lakes, Jenkins and Pine River.

It is anticipated that the ''Trunk Highway 371 Scoping Document/Draft Scoping Decision Document'' will be published in the fall of 2002. A press release will be published to inform the public of the document's availability. Copies of the scoping document will be distributed to agencies, interested persons and libraries for review to aid in identifying issues and analyses to be contained in the EIS. A thirty-day comment period for review of the document will be provided to afford an opportunity for all interested persons, agencies and groups to comment on the proposed action. A public scoping meeting will also be held during the comment period. Public notice will be given for the time and place of the meeting. A Draft EIS will be prepared based on the outcome of the scoping process. The Draft EIS will be available for agency and public review and comment. In addition, a public hearing will be held following completion of the Draft EIS. Public Notice will be given for the time and place of the public hearing on the Draft EIS. Coordination has been initiated and will continue with the appropriate Federal, State and local agencies and private organizations and citizens who have previously expressed or are known to have an interest in the proposed action. 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 FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: October 23, 2002.

Stanley M. Graczyk,

Project Development Engineer, Federal Highway Administration, St. Paul, Minnesota.

[FR Doc. 02–27555 Filed 10–29–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Marine Transportation System National Advisory Council

AGENCY: Maritime Administration, DOT.

ACTION: National Advisory Council public meeting.

SUMMARY: The Maritime Administration announces that the Marine Transportation System National Advisory Council (MTSNAC) will hold a meeting to discuss the Council's Team Reports, its SEA–21 proposal, and other issues. A public comment period is

scheduled for 9 to 9:30 a.m. on Friday, November 15, 2002. To provide time for as many people to speak as possible, speaking time for each individual will be limited to three minutes. Members of the public who would like to speak are asked to contact Raymond Barberesi by November 7, 2002. Commenters will be placed on the agenda in the order in which notifications are received. If time allows, additional comments will be permitted. Copies of oral comments must be submitted in writing at the meeting. Additional written comments are welcome and must be filed by November 22, 2002.

DATES: The meeting will be held on Thursday, November 14, 2002, from 1 p.m. to 5 p.m. and Friday, November 15, 2002, from 8:30 a.m. to 3 p.m.

ADDRESSES: The meeting will be held in the Millennium Broadway Hotel, 145 West 44th Street, New York, NY 10036. The hotel's phone number is (212) 768–4400.

FOR FURTHER INFORMATION CONTACT: Raymond Barberesi, (202) 366–4357; Maritime Administration, MAR 830, Room 7201, 400 Seventh St., SW, Washington, DC 20590; *Raymond.Barberesi@marad.dot.gov.*

(Authority: 5 U.S.C. App 2, Sec. 9(a)(2); 41 CFR 101–6. 1005; DOT Order 1120.3B)

Dated: October 24, 2002.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–27545 Filed 10–29–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket Number NHTSA–2002–13463]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on a previously approved collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before December 30, 2002.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 9 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Ms. Carlita Ballard, NHTSA, 400 Seventh Street, SW., Room 5320, Washington, DC 20590. Ms. Ballard's telephone number is (202 366–0307). Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following previously approved collection of information:

Title: Insurer Reporting Requirement for 49 CFR Part 544.

OMB Control Number: 2127–0547.

Affected Public: Business or other for-profit.

Form Number: The collection of information uses no standard forms.

Abstract: This information collection supports the Department's strategic goal of Economic Growth and Trade. The Motor Vehicle Theft Law Enforcement Act of 1984, added Title VI to the Motor Vehicle and Information Cost Savings Act (recodified as chapter 331 of Title 49, United States Code) (copy attached) which mandated this information collection. The 1984 Theft act was amended by the Anti Car Theft Act (ACTA) of 1992 (Pub. L. 102–519). NHTSA is authorized under 49 U.S.C. 33112, to collect this information. This information collection supports the agency's economic growth and trade goal through rulemaking implementation developed to help reduce the cost of vehicle ownership by reducing the cost of comprehensive insurance coverage. 49 U.S.C. 33112 requires certain passenger motor vehicle insurance companies and rental/leasing companies to provide information to NHTSA on comprehensive insurance premiums, theft and recoveries and actions taken to address motor vehicle theft.

Estimated Annual Burden: Based on prior years' insurer compilation information, the agency estimates that the time to review and compile information for the reports will take approximately a total of 66,300 burden hours (56,700 man-hours for 28 insurance companies and 9,600 man-hours for 17 rental and leasing companies). Most recent year insurer compilation information estimates that it takes an average cost of $36.00 per hour for clerical and technical staff to prepare the annual reports. Therefore, the agency estimates the total cost associated with the burden hours to be $2,386,800.

The burden hour for rental and leasing companies is significantly less than that for insurance companies because rental and leasing companies comply with fewer reporting requirements than the insurance companies. The reporting burden is based on claim adjusters' salaries, clerical and technical expenses, and labor costs.

Number of Respondents: 45.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department,

including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: October 24, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–27611 Filed 10–29–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket Number NHTSA–02–13556]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Extension of a currently approved collection.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before December 30, 2002.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Rosalind Proctor, NHTSA 400 Seventh Street, SW., (Room 5320–N and NVS–131), Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: 49 CFR part 575 Consumer Information Regulations (sections 103 and 105).

OMB Control Number: 2127–0049.

Affected Public: Motor vehicle manufacturers of light trucks and utility vehicles.

Form Number: Not Applicable.

Abstract: NHTSA must ensure that motor vehicle manufacturers comply with 49 CFR part 575, Consumer Information Regulation part 575.103 Truck-camper loading and part 575.105 Utility Vehicles. Part 575.103, requires that manufacturers of light trucks that are capable of accommodating slide-in campers to provide information on the cargo weight rating and the longitudinal limits within which the center of gravity for the cargo weight rating should be located. Part 575.105, requires that manufacturers of utility vehicles affix a sticker in a prominent location alerting drivers that the particular handling and maneuvering characteristics of utility vehicles require special driving practices when these vehicles are operated.

Estimated Annual Burden: 300 hours.

Number of Respondents: 15.

Based on prior years' manufacturer submissions, the agency estimates that 15 responses will be submitted annually. Currently 13 light truck manufacturers comply with 49 CFR part 575. These manufacturers file one response annually and submit an additional response when they introduce a new model. The light truck manufacturers gather only pre-existing data for the purposes of this regulation. Based on previous years' manufacturer information, the agency estimates that light truck manufacturers use a total of 20 hours to gather and arrange the data in its proper format, to distribute the information to its dealerships, and to print the labels and utility vehicle information in the owner's manual. The estimated annual burden hour is 300 hours. This number reflects the total responses (15) times the total hours (20). Prior years' manufacturer information indicates that it takes an average of $35.00 per hour for professional and clerical staff to gather data, distribute and print material. Therefore, the agency estimates that the cost associated with the burden hours is $10,500 ($35.00 per hour x 300 burden hours).

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: October 24, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–27612 Filed 10–29–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34260]

Aliquippa & Ohio River Railroad Co.—Acquisition and Operation Exemption—Lines In Aliquippa, PA

Aliquippa & Ohio River Railroad Co. (AORR),[1] a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 21 miles of rail line owned by Aliquippa & Southern Railroad (A&S), in the vicinity of Aliquippa, PA.[2] In addition, AORR will purchase from A&S certain parcels of real estate, various items of equipment and shop machinery, three locomotives, and a number of shops, buildings, and vehicles. AORR certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier, and further certifies that its projected annual revenues will not exceed $5 million.

The transaction was expected to be consummated on or shortly after October 10, 2002, the effective date of the exemption (7 days after the notice was filed).

This transaction is related to STB Finance Docket No. 34261, *Summit View, Inc.—Continuance in Control Exemption—Aliquippa & Ohio River Railroad Co.,* wherein Summit has concurrently filed a verified notice of exemption to continue in control of AORR upon its becoming a Class III rail carrier.

AORR will operate as a switching and terminal railroad, interchanging traffic with CSX Transportation, Inc., at Aliquippa. The major commodities to be handled are steel billets and beams, steel slabs and scrap.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34260, must be filed with the Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kelvin J. Dowd, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

Board decisions and notices are available on our Web site at *''www.stb.dot.gov.''*

Decided: October 22, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–27481 Filed 10–29–02; 8:45 am]

BILLING CODE 4915–00–P

[1] AORR is controlled by Summit View, Inc. (Summit), a noncarrier, which, at the time of filing this notice, controlled nine Class III carriers.

[2] A&S is a subsidiary of LTV Steel Corp., a company currently under bankruptcy protection.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34268]

Carolina Rail Service, LLC—Acquisition and Operation Exemption—Beaufort & Morehead Railway, Inc.

Carolina Rail Service, LLC (CRS), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire by assignment any and all operating authority that the Beaufort & Morehead Railway, Inc. (BMRI) has over a specified rail line in North Carolina. The subject rail line extends from the connection with the Norfolk Southern Railway Company (Atlantic & East Carolina Railway) at milepost 0.0 in Morehead City, NC, to milepost 0.87 at Gallants Channel near Morehead City, a distance of .87 miles in Carteret County, NC, serving the intermediate stations of Marsh Island and Radio Island, and includes all trackage incidental thereto. CRS will operate over those lines pursuant to an operating agreement with the North Carolina State Ports Authority (SPA)[1] and a permanent and exclusive easement granted by the North Carolina Ports Railway Commission (PRC).[2]

CRS states that the impetus for this transaction is new legislation enacted by the State of North Carolina legislature, SB 1115, ratified September 20, 2002. This legislation, among other things, requires the transfer of PRC's assets and liabilities, except its common carrier obligation, to SPA, and abolishes PRC.

CRS also filed a notice of exemption on October 1, 2002, in STB Finance Docket No. 34256, *Carolina Rail Service, LLC—Acquisition and Operation Exemption—North Carolina Ports Railway Commission and North Carolina State Ports Authority,* wherein CRS seeks to acquire a permanent and exclusive easement over this .87-mile line as well as over approximately 4 miles of intra-terminal track at the Morehead City terminal from PRC, and the right to operate over those rail lines pursuant to an operating agreement with SPA.

CRS certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier and that its projected annual revenues will not exceed $5 million.

CRS indicates that it expects to consummate the transaction by November 20, 2002, but not before the October 22, 2002 effective date of the exemption (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34268, must be filed with the Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Karl Morell, Ball Janik LLP, 1455 F Street NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: October 24, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–27586 Filed 10–29–02; 8:45 am]

BILLING CODE 4915–00–P

[1] In a related matter, SPA filed a notice of exemption in STB Finance Docket No. 34258, *North Carolina State Port Authority—Acquisition Exemption—North Carolina Ports Railway Commission,* wherein SPA seeks to acquire the right-of-way, trackage, and other rail assets of these rail lines. SPA also filed a motion to dismiss that notice on jurisdictional grounds.

[2] Our predecessor, the Interstate Commerce Commission exempted PRC from regulation under the Interstate Commerce Act, but determined that PRC had a residual common carrier obligation over these lines. *See North Carolina Ports Railway Commission—Petition for Declaratory Order or Prospective Abandonment Exemption,* Finance Docket No. 31248 (ICC served Sept. 30, 1988).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34256]

Carolina Rail Service, LLC—Acquisition and Operation Exemption—North Carolina Ports Railway Commission and North Carolina State Ports Authority

Carolina Rail Service, LLC (CRS), a Class III rail carrier, has filed a notice of

exemption under 49 CFR 1150.41 to acquire a permanent and exclusive easement over approximately 4.87 miles of rail line from the North Carolina Ports Railway Commission (PRC), and to operate over those lines pursuant to an operating agreement with the North Carolina State Ports Authority (SPA).[1] The subject rail line extends from the connection with the Norfolk Southern Railway Company (Atlantic & East Carolina Railway) at milepost 0.0 in Morehead City, NC, to milepost 0.87 at Gallants Channel near Morehead City, a distance of .87 miles in Carteret County, NC, serving the intermediate stations of Marsh Island and Radio Island, and includes all of the railroad tracks on the Port of Morehead City, whether denominated as spurs, side tracks, industrial tracks, or otherwise, together with all of PRC's yard and interchange tracks.[2] The subject lines include approximately 4 miles of intra-terminal track at the Morehead City terminal over which CRS currently operates a terminal switching railroad.

CRS states that the impetus for this transaction is new legislation enacted by the State of North Carolina legislature, SB 1115, ratified September 20, 2002. This legislation, among other things, requires the transfer of PRC's assets and liabilities, except its common carrier obligation, to SPA, and abolishes PRC.

On October 15, 2002, CRS filed a related notice of exemption in STB Finance Docket No. 34268, *Carolina Rail Service, LLC—Acquisition and Operation Exemption—Beaufort & Morehead Railway, Inc.,* wherein CRS seeks to acquire the Beauford & Morehead Railway, Inc.'s operating authority over the .87 miles of rail line listed above in Carteret County, NC.

CRS certifies that its projected revenues will not exceed those that would qualify it as a Class III rail carrier and that the annual revenues are not projected to exceed $5 million.

CRS indicates that it expects to consummate the transaction by November 20, 2002, but not before the October 8, 2002 effective date of the exemption (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34256, must be filed with the Surface Transportation Board, 1925 K Street NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Karl Morell, Ball Janik LLP, 1455 F Street NW, Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 24, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–27584 Filed 10–29–02; 8:45 am]

BILLING CODE 4915–00–P

[1] In a related matter, SPA filed a notice of exemption in STB Finance Docket No. 34258, *North Carolina State Port Authority—Acquisition Exemption—North Carolina Ports Railway Commission,* wherein SPA seeks to acquire the right-of-way, trackage, and other rail assets of these rail lines. SPA also filed a motion to dismiss that notice on jurisdictional grounds.

[2] Our predecessor, the Interstate Commerce Commission, exempted PRC from regulation under the Interstate Commerce Act, but determined that PRC had a residual common carrier obligation over these lines. *See North Carolina Ports Railway Commission—Petition for Declaratory Order or Prospective Abandonment Exemption,* Finance Docket No. 31248 (ICC served Sept. 30, 1988).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34257]

Wilmington Terminal Railroad, L.P.—Acquisition and Operation Exemption—North Carolina Ports Railway Commission and North Carolina State Ports Authority

Wilmington Terminal Railroad, L.P. (WTR), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire a permanent and exclusive easement over approximately 18 miles of rail line from the North Carolina Ports Railway Commission (PRC), and to operate over those lines pursuant to an operating agreement with the North Carolina State Ports Authority (SPA).[1] The subject lines are located in Wilmington, New Hanover County, NC, and include the following: (1) The Front Street Spur, from the east line of Third Street at CSX Rail Valuation Station 91+37.3 and extending generally in a northerly direction, a distance of approximately 0.66 miles, to CSX Rail Valuation Station 56+39; (2) the New River Spur, from the CSX Rail Valuation Station 0+00, (also known as Rail Valuation Station 86+20) on the Front Street Spur at the west line of Second Street and extending generally in a southerly direction a distance of approximately 3.5 miles, to CSX Rail Valuation Station 185+00; and (3) the line from the north entrance to the Port of Wilmington at Transit Road, near its intersection with Burnett Blvd., to the south entrance to the Port, at River Road near its intersection with Shipyard Blvd., through and including the classification yards and including all of the railroad tracks on the Port, whether denominated as spurs, side tracks, industrial tracks, or otherwise (but excluding crane rails).[2] WTR currently operates the subject lines.

WTR states that the impetus for this transaction is new legislation enacted by the State of North Carolina legislature, SB 1115, ratified September 20, 2002. This legislation, among other things, requires the transfer of PRC's assets and liabilities, except its common carrier obligation, to SPA, and abolishes PRC.

WTR certifies that its projected revenues will not exceed those that would qualify it as a Class III rail carrier and that the annual revenues are not projected to exceed $5 million.

WTR indicates that it expects to consummate the transaction by November 20, 2002, but not before the October 8, 2002 effective date of the exemption (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34257, must be filed with the Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Donald G. Avery, Slover & Loftus, 1224 Seventeenth Street NW., Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 24, 2002.

[1] In a related matter, SPA filed a notice of exemption in STB Finance Docket No. 34258, *North Carolina State Port Authority—Acquisition Exemption—North Carolina Ports Railway Commission,* wherein SPA seeks to acquire the right-of-way, trackage, and other rail assets of these rail lines. SPA also filed a motion to dismiss that notice on jurisdictional grounds.

[2] Our predecessor, the Interstate Commerce Commission, exempted PRC from regulation under the Interstate Commerce Act, but determined that PRC had a residual common carrier obligation over these lines. *See North Carolina Ports Railway Commission—Petition for Declaratory Order or Prospective Abandonment Exemption,* Finance Docket No. 31248 (ICC served Sept. 30, 1988).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–27585 Filed 10–29–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34261]

Summit View, Inc.—Continuance in Control Exemption—Aliquippa & Ohio River Railroad Co.

Summit View, Inc. (Summit), a noncarrier, has filed a verified notice of exemption to continue in control of Aliquippa & Ohio River Railroad Co. (AORR), upon AORR's becoming a Class III railroad.

The transaction was scheduled to be consummated on October 10, 2002, the effective date of the exemption (7 days after the notice was filed).

This transaction is related to the concurrently filed verified notice of exemption in STB Finance Docket No. 34260, *Aliquippa & Ohio River Railroad Co.,—Acquisition and Operation Exemption—Lines in Aliquippa, PA,* wherein AORR seeks to acquire and operate approximately 21 miles of rail lines currently owned and operated by Aliquippa & Southern Railroad (A&S), in the vicinity of Aliquippa, PA. AORR will interchange with CSX Transportation, Inc., at Aliquippa. AORR will handle freight traffic for the customers formerly served by A&S, without any change in material level or quality of transportation service.

At the time it filed this notice, Summit controlled nine Class III railroads: The Columbus & Ohio River Rail Road Company; Ohio Central Railroad, Inc.; Mahoning Valley Railway Company; Ohio & Pennsylvania Railroad Company; Ohio Southern Railroad, Inc; Youngstown & Austintown Railroad, Inc.; Warren & Trumbull Railroad Company; the Youngstown Belt Railroad Company; and the Pittsburgh & Ohio Central Railroad Company, all operating in the States of Pennsylvania and Ohio.

AORR states that: (1) The railroads do not connect with each other or any railroad in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the ten railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34261, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kelvin J. Dowd, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

Board decisions and notices are available on our Web site at *''www.stb.dot.gov.''*

Decided: October 22, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–27482 Filed 10–29–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket BTS–2001–10909]

Agency Information Collection Activities Under OMB Review: OMB No. 2139–0002 and 2139–0004 (Financial and Operating Statistics for Motor Carriers of Property)

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice of final disposition.

SUMMARY: BTS has submitted the following two Information Collection Requests (ICRs) described in this notice to the Office of Management and Budget (OMB) for review and approval as required under the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13. The agency has issued two previous **Federal Register** notices on related PRA burden estimates. BTS has received additional public comments on the related burden estimates for motor carriers of property (Class I and Class II) subject to BTS regulations, and OMB has asked the agency to conduct a reevaluation of the ICRs and the related burden estimates. Therefore, based on comments received to BTS Docket 10909, BTS is providing a summary of its reevaluation and analysis of the original burden estimates for each ICR and is requesting an extension from OMB through May 31, 2005. The current OMB approval expires on May 31, 2003, for each form.

DATES: Comments must be submitted on or before November 29, 2002.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10202, Washington, DC 20502, ATTN: Desk Officer for the Bureau of Transportation Statistics. Comments should identify the docket number and be submitted in duplicate. OMB requests comments by November 29, 2002, to process the ICR expeditiously.

FOR FURTHER INFORMATION CONTACT: Paula R. Robinson, Compliance Program Manager, Office of Motor Carrier Information, K–13, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001; (202) 366–2984; fax: (202) 366–3364; e-mail: *paula.robinson@bts.gov.*

SUPPLEMENTARY INFORMATION:

Title: Financial and Operating Statistics for Motor Carriers of Property.

OMB Approval Numbers: 2139–0002 (Form QFR) and 2139–0004 (Form M).

The Financial and Operating Statistics (F&OS) for Motor Carriers of Property is a collection of annual and quarterly financial and operating statistics data from the motor carrier community. The regulations require motor carriers of property with annual revenues of $3 million or more to file annual reports, and carriers with annual revenues of $10 million or more to file quarterly reports with BTS, as required by 49 CFR 1420, Reports of Motor Carriers. The agency ensures that the data and information collected are made publicly available as mandated by Congress (49 U.S.C. 14123).

In accordance with OMB regulations (5 CFR part 1320), each agency that is renewing an information collection activity must notify the public of its intention to renew the collection activity, provide an opportunity for public comment, and notify the public when the agency has sent its information clearance package to OMB.

Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each information collection they conduct or sponsor. BTS solicited public comment on November 5, 2001, on the information collection requirements for OMB 2139–0002 (Form QFR) and OMB 2139–0004 (Form M) contained in BTS regulations, Reports for Motor Carriers (66 FR 55981). The notice received three comments to the docket from the Central Analysis Bureau (CAB), International Brotherhood of Teamsters, and Inland Marine Underwriters Association. Pursuant to OMB requirements, a second notice was published on March 5, 2002, (67 FR 10043), allowing a 30-day comment period. BTS received 18 additional comments to the docket, some after the comment period closed on April 4, 2002.

Sixteen motor carriers, one government agency, and one private insurance organization provided additional comments to the docket. The motor carriers were All-Pro Transport, Inc.; Burns Motor Freight, Inc.; Daggett Truck Line, Inc.; Falcon Transport, Inc.; Fikes Truck Line, Inc.; Howell's Motor Freight, Inc.; Market Transport Ltd.; New Country, Inc.; Olson Carriers, Inc.; Paschall Truck Lines, Inc.; PFT Transport, Inc.; Pioneer Transport, Inc.; RJW Transport, Inc.; Stagecoach Cartage and Distribution, Inc.; USA Truck, Inc.; and Witte Bros. Exchange, Inc. The carriers' comments were virtually identical (similar to form letters) and each opposed the agency's data collection program. CAB and the U.S. Department of Commerce's Bureau of Economic Analysis (BEA) provided comments supporting the program. CAB included supplemental information to comments previously submitted to this docket. All comments have been considered and included as part of the agency's overall reevaluation of the financial reporting requirements for motor carriers of property (Class I and Class II).

On May 13, 2002, OMB approved a provisional clearance for BTS information collection requests for one year and instructed the agency to address concerns expressed by commenters to the previous ICRs. OMB requested that the agency publish a notice containing any revised estimates of the burden hours required to comply with the ICR. BTS is requesting OMB's approval to extend the existing ICR expiration (May 2003) so the data collection instrument may continue being used by motor carriers to report their annual and quarterly financial and operating data. This effort will ensure that decision-making of Federal and private agencies and research activities throughout government, businesses, and academia will continue with benefit to the public. Approval of this request will allow the forms to remain effective for a 3-year period, until May 31, 2005. The results of the agency's reevaluation and analysis are described below.

This notice summarizes the results of the reevaluation and establishes a public comment period of 30 days from the date of publication in the **Federal Register**. The agency is requesting that the OMB extend the 1-year approval to 3 years once it has conducted a review of the agency's information collection requests. All public comments to the agency's reevaluation and analysis should be sent to OMB at the address shown in the **ADDRESSES** section above.

Discussion of Comments

BTS has considered the comments to the docket and believes that the F&OS data and associated information serve a useful purpose for many users engaged in analytical and decision-making activities. The users include trucking companies, insurance companies, trade associations and labor organizations, academics, and Federal agencies where trucking industry policy is evaluated and formed, and others that rely on motor carrier statistics to carry out their mandated statistical programs (*e.g.*, Department of Commerce's Bureau of Economic Analysis). Within these sectors, researchers and analysts benchmark expenses [1] of individual trucking companies; investment analysts provide advice to clients based on industry trends; trade associations and journals use the F&OS data as the basis for analyses on the current economic status of trucking (which itself is used as an indicator of change in economic conditions); and government agencies conduct analysis of F&OS data to anticipate shifts in industry economics and to support policymaking decisions. Trucking company comments assert that the data collected serve no useful purpose. BTS disagrees with that view and invites all users and interested parties to provide BTS with detailed information about the various ways the data are used and the importance of the data to their organizations.

All 16 motor carriers disagreed with the proposed reporting requirements, stating that the regulations in 49 CFR 1420 should be eliminated. However, the motor carriers stated in their remarks that if BTS finds it necessary to continue the reporting requirements, then the data and information should focus on the ''financial health of individual motor carriers.'' The carriers proposed that the Form M be replaced with a postcard that contains only the carrier's name, address, census number, gross and net revenues and gross expenses on an annual basis. They stated that the abbreviated filing would reduce the quantity of the information collected and improve the quality. BTS believes that the data and information currently collected for motor carriers of property subject to BTS regulations are consistent with the requirements of 49 U.S.C. 14123. Given the diversity of the individuals and groups who use BTS data, the agency disagrees with the carriers' suggestion that the Form M be replaced with a ''postcard'' requesting only limited information about the carrier. BTS does not believe a significant reduction in this reporting requirement would satisfy the statutory requirement or the intentions of Congress. The statute requires that, ''at a minimum, such reports shall include balance sheets and income statements.'' (*See* 49 U.S.C. 14123(a).) The agency believes that this postcard version of the form could not provide meaningful balance sheet and income statement data and thus would fall below the minimum requirements of the statute.

Moreover, the basic financial data contained in balance sheet and income statements are generated in the normal course of business by most trucking companies, permitting managers to assess the results of their operations. In addition, they can form the basis for the income tax returns filed by motor carriers. The financial data are often provided to bankers, vendors, other State and Federal governmental licensing agencies, financial rating agencies like Dun and Bradstreet, insurance companies, *etc.,* to assist in the evaluation of a company's financial results. Further, other government agencies involved in the trucking industry require other Form M information, such as carriers' equipment inventory data (number of trucks) and other operational statistics (*e.g.*, number of employees).

Secondly, the commenters asked that the Form QFR be eliminated because it's not required by the statute and serves no useful purpose. Under the governing legislation in 49 U.S.C. 14123, the agency is allowed to collect other reports, including quarterly reports (Form QFR). The collection of quarterly

[1] A process of comparing a trucking company's expenses, operating statistics, and other characteristics (*e.g.*, aggregates, compilations, or averages for line item data on Form M (annual report) and/or Form QFR (quarterly report)) with those of other trucking companies or groups of them for the purpose of evaluating how one's company differs from the industry generally, with the end of improving one's results.

data is valuable to researchers analyzing and evaluating F&OS data. In fact, BTS conducts its own motor carrier industry research on the financial health of the industry for DOT decision-makers, and the data are considered an integral part of these evaluations.

The BTS believes that the regulations have not been shown to represent a significant burden on motor carriers and are critical to many users. The total burden hours reported for these collections are a total of 1.8 hours annually per carrier for the four Form QFR (Quarterly) reports and 9 hours for the Form M (Annual Report). The agency's objective is to continue to work with motor carriers, the transportation industry, the financial community, and other public and private organizations to collect F&OS data and conduct and facilitate useful analysis. The carriers believe that the burden hours are underestimated, but do not provide any data that would lead to more accurate estimates. Therefore, BTS, without any additional data from the carriers to support their position as to the extent of the burden or the lack of usefulness of the data, will not implement their recommendations at this time.

However, BTS will continue to seek ways to reduce the burden on the motor carrier industry and welcomes any ideas, suggestions, or comments from interested parties on ways to improve the reporting process. Specifically, BTS is seeking carrier information that includes details on the amount of time required to complete both forms (Forms M and QFR); the type of person the carrier uses or hires to complete the form (*i.e.*, carrier employees, outside accountant, lawyer, *etc.*); any associated costs incurred by the carrier; information on filing methods used, including electronic (*i.e.*, CD, internet, etc.), to complete the forms; and form retention activities. BTS notes that while the agency solicits additional data and clarification from carriers regarding the accuracy of BTS burden estimates for these collections, any action to amend the regulations would require substantial rulemaking efforts and the opportunity for public comment.

The comments of the U.S. Department of Commerce's Bureau of Economic Analysis (BEA) in support of the BTS' data collection program stated specifically that they use the program as a ''main data source for key components of BEA economic statistics.'' Specifically, they reference the BEA's Annual Input-Output Accounts, as well as ''essential detail or inputs to supplement the information on motor carriers collected by the Bureau of the Census. * * *''

BTS believes that to continue to benefit the public the decision-making and research activities made possible by the F&OS data collection program must continue in a comprehensive and uninterrupted manner. Some additional public benefits include: government analyses of the business health of the for-hire trucking industry as a basis for policies to facilitate an integral part of the nation's transportation network; continued widespread dissemination and analysis of industry data by trade associations; enabling trucking companies to improve their operations by emulating successful companies as they ''benchmark'' their operating results against industry averages and assess what improvements they need to make to better serve the public; providing the basis for assessments of profitability by interested parties, including insurance companies and labor unions; allowing shippers and their organizations to make more informed choices among carriers; and supporting the educational process, by providing objective data for academic research, teaching, and training (*e.g.*, of future trucking company managers). Except for publicly-held companies, there are no publicly available individual-carrier-based F&OS other than those from the Form M and Form QFR; these trucking company statistics provide ''equal access to data'' to benefit the public—regulators and the regulated have the same data upon which to base policy decisions and business planning analyses. In addition, BTS is involved in extensive analyses of the motor carrier industry using QFR data. Results of these analyses are used within the Department of Transportation and will be soon be released and available to the public.

The agency also disagrees that BTS forms are not available for on-line filing. For more than a year, the agency has placed additional resources on BTS' Web site in order to reduce the burden on the industry and to encourage more electronic filing. The agency has determined that there has been a 30% increase in the number of motor carriers filing reports (Form M and Form QFR) using on-line and other electronic methods. In addition, the agency has implemented automated quality control and edit-check (QC/EC) systems to improve the completeness of filed reports and the accuracy of the data. The agency expects these efforts to increase the total number of motor carriers filing on-line reports.

CAB is also in support BTS' efforts to collect financial and operating statistics for motor carriers. CAB submitted comments that were discussed in the agency's second notice published on March 5, 2002 (67 FR 10043). CAB, in its remarks, requested the agency to include additional data items on the Form M. CAB supports BTS' need for the data collection program and, as a major user of the data, believes the Form M can be completed in less than 9 hours, based on motor carriers compiling the same data for corporate and tax purposes. CAB felt the burden estimate for the second ICR, Form QFR, was reasonable.

The CAB provided additional comments to the docket containing supplemental information to support its original comments in the docket. CAB's suggested that its proposal added no discernible impact on the reporting burden. BTS will consider the CAB's comments in future rulemakings associated with these information collections.

As noted above, the BEA is in strong support of the agency's continued collection of F&OS data. BEA commented that the data are essential to its Annual Input-Output Accounts, which are used to prepare estimates of industry output and in understanding the infrastructure of the economy.

Based on the statutory requirements, BTS considered some of the comments in the docket beyond the scope of its data collection program evaluation. Below is a brief summary of the agency reevaluation for each ICR under the appropriate approval number. The estimates that appear in the agency's evaluation are identical to those used in the ICR submission to OMB for renewal of the BTS Forms.

I

OMB Approval Number: 2139–0002 (Form QFR).

Title: Quarterly Report of Class I Motor Carriers of Property.

Estimated annual burden hours: The Quarterly Report of Class I Motor Carriers of Property (Form QFR) imposes 1,800 (27 minutes per quarter) total annual burden hours on motor carriers reporting to BTS. The figures shown on the information collection supporting statement (on file with OMB) for this collection are estimates based on the total number of filers (including new entrants and repeat filers), the frequency of reporting, and the time needed to compile the information and record information on the form (used to comply with the BTS regulations in 49 CFR part 1420).

Reporting: BTS regulations for the Form QFR are applicable to for-hire (common and contract) carriers that generate $10 million or greater in gross annual operating revenues. Motor

carriers that meet this requirement must report their quarterly F&OS data to BTS. The data collected include selected income statement information along with information on tonnage, mileage, and number of shipments. These data are contained on a single page and are extracted from normal trucking management reports and accounting information that most carriers have readily available. BTS estimates that approximately 1,000 respondents each take an estimated 1.8 hours (27 minutes per quarter) annually to file quarterly reports with BTS. The total annual burden-hour estimate is 1,800 hours (1.8 hours × 1,000). The total number of respondents is based on the maximum average number of respondents per quarter, including new entrants and repeat filers. New entrants are typically motor carriers that are reporting data on the Form QFR for the first time. This group of carriers normally requires additional time to complete the two-page form with additional assistance from BTS as well as other sources. These estimates were based in part on estimates contained in the last approved ICR.

Agency data show that about 30% of the repeat filers report on the Form QFR through electronic means (*i.e.*, Internet, disk, or CD) while 70% use written reports to file using downloadable forms or forms provided by BTS. The time needed to meet the reporting requirement for this collection is more for the first time filer and less for the repeat. As part of its overall estimate, the agency considered previously reported figures and recalculated the estimates based on the total number of electronic filers.

II

OMB Approval Number: 2139–0004 (Form M).

Title: Annual Report of Class I and Class II Motor Carriers of Property.

Estimated annual burden hours: BTS estimates that the Annual Report of Class I and Class II Motor Carriers of Property (Form M) ($3 million or greater in adjusted operating revenue) imposes 27,000 annual burden hours on motor carriers reporting to BTS. The figures shown in the supporting statement are estimates based on the total number of filers (including new entrants and repeat filers), the frequency of reporting, and the time needed to compile the information (including recording the information on the form).

Reporting: BTS regulations for the Form M are applicable to for-hire (common and contract) carriers that generate $3 million or more gross annual operating revenues. These carriers are required to report their F&OS data to BTS. The data collected include selected balance sheet and income statement data along with information on tonnage, mileage, employees, transportation equipment, and other related data. BTS records show that in FY 2001 approximately 3,000 motor carriers filed a Form M. BTS estimates that each Form M (8 pages) takes about 9 hours (average) to complete. Approximately 30% of the carriers use electronic methods (Internet, CD, or disk), which require less than 9 hours to file; carriers that do not file on-line may require more time. The respondent carriers employ their own staff as well as outside accountants, lawyers, and other experts to complete the forms. BTS data indicate that although a large number of carriers that file the Form M are repeat filers, a substantial number of filers are new entrants, which require additional time to complete the Form M. Although the agency has seen an increase in new entrants over the years due to educational and outreach campaigns to the industry, this increase has been offset somewhat by the number of bankruptcies and firms going out of business (as shown in recent industry financial reports such as Dun and Bradstreet and Standard and Poor's). BTS includes these factors when determining estimates of the time required for this information collection.

Estimated Annual Cost of Burden: The combined estimated cost to the government is $1.2 million dollars for the Form M and Form QFR. This figure includes salary costs based on hours, overhead, printing, and payment to contractors. The agency, having received no supporting data as to the magnitude of the burden on carriers, employs the following estimate of normal costs of motor carriers associated with filing BTS' Form M (annual) and Form QFR (quarterly). The number of burden hours is 9 hours for the Form M and 1.8 hours for the Form QFR. Based on Bureau of Labor Statistics (BLS) data, an accountant's cost is $21.56 per hour with a fringe benefit percentage of 44.4%. If we apply these dollars to the hourly efforts for motor carriers for each form, the result is $895,968 (for Form M) and $55,998 (for Form QFR), for a combined total of $951,966 for the motor carrier industry.

BTS BURDEN HOURS ESTIMATES

	Class II motor carriers (OMB #2139–0002)	Class I & II motor carriers (OMB #2139–0004)
Number of Respondents	1,000	3,000.
Frequency of Responses	Quarterly	Annual.
Estimated Time Per Carrier	1.8 hours (27 minutes per quarter)	9 hours.
Prior Total Annual Burden Hours	1,800	27,000.
Revised Total Annual Burden Hours	No Change	No Change.
Estimated Costs on Motor Carriers	Change: $55,998 (est)	Change: $885,968 (est.).

Data and Sources

1. Mean hourly wage estimate for accountants: $21.56. (Source: 2000 National Industry-Specific Occupational Employment and Wage Estimates, SIC 421—Trucking and Courier Services, Except Air, 13–2011 Accountants and Auditors, 09/06/02; *http://www.bls.gov/oes/2000/oesi3_421.htm)*

2. Mean hourly earnings for accountants: $21.51. (Source: Table 1: Hourly Earnings of Full-time and Weekly and Annual Work Hours, National Compensation Survey, 2000, ''Accountants and Auditors,'' BLS *Monthly Labor Review*, March 2002, p. 49.)

3. Employer costs per hour worked for employee compensation; ''total compensation'': $20.01 (Source: BLS *News*, USDL: 02–346, June 19, 2002.)

Russell B. Capelle, Jr.,

Assistant BTS Director for Motor Carrier Information, U.S. Department of Transportation.

[FR Doc. 02–27527 Filed 10–29–02; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 22, 2002.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 29, 2002, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0168.

Form Number: IRS Form 4361.

Type of Review: Extension.

Title: Application for Exemption from Self-Employment Tax for Use by Ministers, Members of Religious Orders and Christian Science Practitioners.

Description: Form 4361 is used by ministers, members of religious orders, or Christian Science practitioners to file for an exemption from self-employment tax on certain earnings and to certify that they have informed the church or order that they are opposed to the acceptance of certain public insurance benefits.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 10,270.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	6 min.
Learning about the law or the form.	19 min.
Preparing the form	16 min.
Copying, assembling, and sending the form to the IRS.	16 min.

Frequency of Response: other (one-time).

Estimated Total Reporting/Recordkeeping Burden: 10,168 hours.

OMB Number: 1545–1002.

Form Number: IRS Form 8621.

Type of Review: Extension.

Title: Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.

Description: Form 8621 is filed by a U.S. shareholder who owns stock in a foreign investment company. The form is used to report income, make an election to extend the time for payment of tax, and to pay an additional tax and interest amount. The IRS uses Form 8621 to determine if these shareholders have correctly reported amounts of income, made the election correctly, and have correctly computed the additional tax and interest amount.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents/Recordkeepers: 2,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	13 hr., 37 min.
Learning about the law or the form.	6 hr., 27 min.
Preparing and sending the form to the IRS.	6 hr., 57 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 54,100 hours.

OMB Number: 1545–1029.

Form Number: IRS Form 8693.

Type of Review: Revision.

Title: Low-Income Housing Credit Disposition Bond or Treasury Direct Account Application.

Description: Form 8693 is needed per Internal Revenue Code section 42(j)(6) to post bond or establish a Treasury Direct Account and waive the recapture requirement under section 42(j) for certain dispositions of a building on which the low-income housing credit was claimed. Internal Revenue regulations section 301.7101–1 requires that the posting of a bond must be done on the appropriate form as determined by the Internal Revenue Service.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents/Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	13 min.
Learning about the law or the form.	22 min.
Preparing, copying, assembling, and sending the form to the IRS.	45 min.

Frequency of Response: On occasion, other (one-time).

Estimated Total Reporting/Recordkeeping Burden: 1,350 hours.

OMB Number: 1545–1657.

Revenue Procedure Number: Revenue Procedure 99–32.

Type of Review: Extension.

Title: Conforming Adjustments Subsequent to Section 482 Allocations.

Description: This revenue procedure prescribes the applicable procedures for the repatriation of cash by a United States taxpayer via an interest-bearing account receivable or payable in an amount corresponding to the amount allocated under section 482 from, or to, a related person with respect to a controlled transaction.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 180.

Estimated Burden Hours Per Respondent: 9 hours.

Frequency of Response: On occasion

Estimated Total Reporting Burden: 1,620 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224. (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. (202) 395–7316.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 02–27538 Filed 10–29–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 22, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 29, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1492.

Form Number: IRS Form 10001.

Type of Review: Extension.

Title: Request for Closing Agreement Relating to Advance Refunding Issue Under Sections 148 and 7121 and Revenue Procedure 96–41.

Description: Form 10001 is used in conjunction with a closing agreement program involving certain issuers of tax-exempt advance refunding bonds. Revenue Procedure 96–41 established

this voluntary compliance program and prescribed the filing of Form 10001 to request a closing agreement.

Respondents: Not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Respondent: 3 hours.

Frequency of Response: Other (one-time).

Estimated Total Reporting Burden: 300 hours.

Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental PRA Clearance Officer.

[FR Doc. 02–27578 Filed 10–29–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–248770–96]

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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–248770–96 (TD 8725). Miscellaneous Sections Affected by the Taxpayer Bill of Rights 2 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (§ 301.7430–2(c)).

DATES: Written comments should be received on or before December 30, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn 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 regulation should be directed to Larnice Mack (202) 622–3179, or through the internet (*Larnice.Mack@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Miscellaneous Sections Affected by the Taxpayer Bill of Rights 2 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

OMB Number: 1545–1356. *Regulation Project Number:* REG–248770–96.

Abstract: Under Internal Revenue Code section 7430 a prevailing party may recover the reasonable administrative or litigation costs incurred in an administrative or civil proceeding that relates to the determination, collection, or refund of any tax, interest, or penalty. Section 301.7430–2(c) of the regulation provides that the IRS will not award administrative costs under section 7430 unless the taxpayer files a written request in accordance with the requirements of the regulation.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations, not-for-profit institutions, farms, and the Federal government.

Estimated Number of Respondents: 38.

Estimated Time Per Respondent: 2 hours, 16 minutes.

Estimated Total Annual Burden Hours: 86.

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: October 23, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–27634 Filed 10–29–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted in Providence, Rhode Island.

DATES: The meeting will be held Saturday, November 9, 2002.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227, or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Saturday, November 9, 2002, from 10 am to 2 pm EST at the Rhode Island Hospital Campus, Ambulatory Patient Center, 593 Eddy Street, 9th floor, Providence, RI 02903. Due to limited conference space, notification of intent to attend the meeting must be made in advance with Marisa Knispel.

Mrs. Knispel may be reached at 1–888–912–1227 or 718–488–3557. The public is invited to make oral comments from 10 am to 2 pm on Saturday, November 9, 2002. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, PO Box R, Brooklyn, NY 11201.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: October 22, 2002.

Cathy VanHorn,

Director, Communication and Liaison.

[FR Doc. 02–27637 Filed 10–29–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Request for Nominations to Advisory Committee on Tax Exempt and Government Entities

AGENCY: Internal Revenue Service (IRS); Tax Exempt and Government Entities Division.

ACTION: Notice.

SUMMARY: The Internal Revenue Service (IRS) is requesting nominations for members to serve on the Advisory Committee on Tax Exempt and Government Entities (ACT). Nominations will be accepted for the following vacancies which will occur in June 2003: two employee plans; two exempt organizations; two government entities. To ensure appropriate balance of membership, final selection from qualified candidates will be determined based on experience, qualifications, and other expertise.

DUE DATE: Written nominations must be received on or before November 29, 2002.

APPLICATION: Nominations should include name; other name(s) used and date(s) (required for FBI check); date of birth (required for FBI check); city and state of birth (required for FBI check); current address; telephone and fax numbers; and E-mail address, if any.

ADDRESSES: Send all applications to: Steven Pyrek, Director, TE/GE Communications and Liaison, 1111 Constitution Ave., NW.—T:CL Penn Bldg, Washington, DC 20224; Fax: (202) 283–9956 (not a toll-free number); E-mail: *steve.j.pyrek@irs.gov*.

FOR FURTHER INFORMATION CONTACT: Rick Trevino, (202) 283–9950 (not a toll-free number), or by e-mail at *rick.trevino@irs.gov*.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Tax Exempt and Government Entities (ACT), governed by the Federal Advisory Committee Act, Pub. L. 92–463, is an organized public forum for discussion of relevant employee plans, exempt organizations, tax-exempt bonds, and state, local, and Indian tribal government issues between officials of the IRS and representatives of the above communities. The ACT also enables the IRS to receive regular input with respect to the development and implementation of IRS policy concerning these communities. ACT members present the interested public's observations about current or proposed IRS policies, programs, and procedures, as well as suggest improvements.

ACT members shall be appointed by the Secretary of the Treasury and shall serve for two-year terms. Terms can be extended in one-year increments, not to exceed two years. ACT members will not be paid for their time or services. ACT members will be reimbursed for their travel-related expenses to attend working sessions and public meetings, in accordance with 5 U.S.C. 5703.

The Secretary of the Treasury invites those individuals, organizations, and groups affiliated with employee plans, exempt organizations, tax-exempt bonds, and state, local or Indian tribal governments, to nominate individuals for membership on the ACT. Nominations should describe and document the proposed member's qualifications for membership on the ACT. Nominations should also specify the vacancy for which they wish to be considered. The Secretary seeks a diverse group of members representing a broad spectrum of persons experienced in employee plans, exempt organizations, tax-exempt bonds, and state, local or Indian tribal governments.

Nominees must go through a clearance process before selection by the Secretary of the Treasury. In accordance with Department of the Treasury Directive 21–03, the clearance process includes, among other things, pre-appointment and annual tax checks, and a Federal Bureau of Investigation criminal and subversive name check and security clearance.

Dated: October 24, 2002.

Steven J. Pyrek,

Designated Federal Official, Tax Exempt and Government Entities Division, Internal Revenue Service.

[FR Doc. 02–27635 Filed 10–29–02; 8:45 am]

BILLING CODE 4830– 01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Taxpayer Advocacy Panel, E-Filing Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: A telephone meeting of the Taxpayer Advocacy Panel will be held on November 14, 2002.

DATES: The meeting will be held Thursday, November 14, 2002, from 3 p.m. to 5 p.m. Eastern Daylight Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or 414–297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel (TAP) will be held by telephone on Thursday, November 14, 2002, from 3 p.m. to 5 p.m. Eastern Daylight Time. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Mail Stop 1006 MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227, or 414–297–1604 for dial-in information. The Agenda will include the following: Future meeting planning and discussion of E-file use by small businesses.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: October 21, 2002.

Cathy Vanhorn,

Director, Communication and Liaison.

[FR Doc. 02–27636 Filed 10–29–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Taxpayer Advocacy Panel, Area Four

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: A telephone meeting of the Taxpayer Advocacy Panel will be held on November 18, 2002.

DATES: The meeting will be held Monday, November 18, 2002, from 11 a.m. to 1 p.m. Central Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or 414–297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section

10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel (TAP) will be held by telephone on Monday, November 18, 2002, from 11 a.m. to 1 p.m. Central Daylight Time. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Mail Stop 1006 MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227, or 414–297–1604 for dial-in information. The Agenda will include the following: Media, marketing, and outreach planning, future meeting planning and the discussion of taxpayer service issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: October 21, 2002.

Cathy VanHorn,

Director, Communications and Liaison.

[FR Doc. 02–27638 Filed 10–29–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas and Tennessee)

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Friday, November 15, 2002.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Friday, November 15, 2002, from 1 pm EST to 3 pm EST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 7771 W. Oakland Park Blvd. Rm. 225, Sunrise, FL 33351, or e-mail *firstcapsfl@mindspring.com.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or e-mail *firstcapsfl@mindspring.com.*

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: October 21, 2002.

Cathy VanHorn,

Director, Communication and Liaison.

[FR Doc. 02–27639 Filed 10–29–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel (TAP) Area 2 Committee (Includes the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia and the District of Columbia)

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel (TAP) will be conducted via teleconference.

DATES: The meeting will be held Thursday, November 21, 2002.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Thursday, November 21, 2002 from 3 pm EST to 5 pm EST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 7771 W. Oakland Park Blvd. Rm. 225, Sunrise, FL 33351, or e-mail *cap_4@mindspring.com.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977, or e-mail *cap_4@mindspring.com.*

The agenda will include the following: Various IRS/TAP issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: October 23, 2002.

Cathy VanHorn,

Director, Communication and Liaison.

[FR Doc. 02–27640 Filed 10–29–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue Committee

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue Committee will be conducted (via teleconference).

DATES: The meeting will be held Friday, November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Multilingual Initiative Issue Committee will be held Friday, November 22, 2002, from 1 pm EST to 2 pm EST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 7771 W. Oakland Park Blvd. Rm. 225, Sunrise, FL 33351, or e-mail *cap_4@mindspring.com.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977, or e-mail *cap_4@mindspring.com.*

The agenda will include the following: Various IRS/TAP Multilingual issues and related topics.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: October 23, 2002.

Cathy VanHorn,

Director, Communication and Liaison.

[FR Doc. 02–27641 Filed 10–29–02; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 67, No. 210

Wednesday, October 30, 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.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46580; File No. SR–BSE–2002–14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange Relating to an Interpretation of its Execution Guarantee Rule

October 1, 2002.

Correction

In notice document 02–25612 beginning on page 62839 in the issue of Tuesday, October 8, 2002 make the following correction:

On page 62841, in the first column, in the first line, ''[insert date 21 days from date of publication].'' should read ''October 29, 2002''.

[FR Doc. C2–25612 Filed 10–29–02; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46582; File No. SR–CBOE–2002–53]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Amending Its Rules To Provide Notice of Benefits of Membership and Attendant Obligations

October 1, 2002.

Correction

In notice document 02–25610 beginning on page 62841 in the issue of Tuesday, October 8, 2002 make the following correction:

On page 62842, in the third column, under the heading **IV. Solicitation of Comments**, in the second line from the bottom, ''[insert date 21 days from date of publication].'' should read ''October 29, 2002.''.

[FR Doc. C2–25610 Filed 10–29–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–08–AD; Amendment 39–12914; AD 2002–21–08]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Model PC–6 Airplanes

Correction

In rule document 02–26589 beginning on page 64520 in the issue of Monday, October 21, 2002 make the following correction:

§39.13 [Corrected]

On page 64522, in § 39.13, in the table, under the ''Actions'' column, in entry (2), in the third line, ''modifying'' should read ''modify''.

[FR Doc. C2–26589 Filed 10–29–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
October 30, 2002

Part II

Securities and Exchange Commission

17 CFR Parts 210, 228, et al.

Disclosure Required by Sections 404, 406 and 407 of the Sarbanes-Oxley Act of 2002; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 228, 229, 240, 249, 270 and 274

[Release Nos. 33–8138; 34–46701; IC–25775; File No. S7–40–02]

RIN 3235–AI66

Disclosure Required by Sections 404, 406 and 407 of the Sarbanes-Oxley Act of 2002

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We propose to require companies to include a number of new disclosures in their Exchange Act filings. First, companies would be required to disclose the number and names of persons that the board of directors has determined to be the ''financial experts'' serving on the company's audit committee and whether they are independent of management, and if not, an explanation of why they are not. Second, companies would be required to include an annual internal control report of management stating the following: management's responsibilities for establishing and maintaining adequate internal controls and procedures for financial reporting for the company; management's conclusions about the effectiveness of the company's internal controls and procedures for financial reporting as of the end of the company's most recent fiscal year; and that the company's registered public accounting firm has attested to, and reported on, management's evaluation of the company's internal controls and procedures for financial reporting. Third, companies would be required to disclose whether they have adopted a code of ethics that covers their principal executive officers and senior financial officers, or if they have not, an explanation of why they have not, as well as amendments to, and waivers from, the code of ethics relating to any of those officers. These proposed rules would implement the requirements in sections 404, 406 and 407 of the Sarbanes-Oxley Act of 2002. We also propose to make revisions to our recently adopted rules requiring a company's principal executive and financial officers to certify the company's quarterly and annual reports and requiring the company to conduct quarterly evaluations of its disclosure procedures and controls. These rules would be amended to require quarterly and annual certifications and quarterly evaluations of internal controls and procedures for financial reporting. We also would amend the form of the principal officers' certification contained in the quarterly and annual report forms.

DATES: Comments should be received on or before November 29, 2002.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by hard copy or e-mail, but not by both methods.

Comments sent by hard copy should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. 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. S7–40–02; if e-mail is used, this file number should be included in the subject line. Comment letters will be available for inspection and copying in 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*).[1]

FOR FURTHER INFORMATION CONTACT: Ray Be, Special Counsel, or N. Sean Harrison, Special Counsel, Division of Corporation Finance, at (202) 942–2910, with respect to registered investment companies, Katy Mobedshahi, Senior Counsel, Division of Investment Management, at (202) 942–0721, or with respect to accounting issues, Michael Thompson, Professional Accounting Fellow, Office of Chief Accountant, at (202) 942–4400, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are proposing amendments to Form 8–K,[2] Form 10–K,[3] Form 10–KSB,[4] Form 10–Q,[5] Form 10–QSB,[6] Form 20–F,[7] Form 40–F,[8] Form 12b–25,[9] Rule 12b–25,[10] Rule 13a–14,[11] Rule 13a–15,[12] Rule 15d–14,[13] and Rule 15d–15[14] under the Securities Exchange Act of 1934,[15] Regulation S–B,[16] Regulation S–K[17] and Regulation S–X.[18] We are also proposing amendments to Form N–SAR[19] and proposed Form N–CSR[20] under the Securities Exchange Act of 1934 and the Investment Company Act of 1940,[21] and Rule 30a–2[22] and proposed Rule 30a–3 under the Investment Company Act of 1940.

I. Background

The strength of the U.S. financial markets depends on investor confidence. Recent events involving allegations of misdeeds by corporate executives, independent auditors and other market participants have undermined that confidence.[23] In response to this threat to the U.S. financial markets, Congress passed, and the President signed into law, the Sarbanes-Oxley Act of 2002 (the ''Sarbanes-Oxley Act''),[24] which effects sweeping corporate disclosure and financial reporting reform.

This release is one of several that the Commission is required to issue to implement provisions of the Sarbanes-Oxley Act. In this release we propose rules to implement the following three provisions of the Sarbanes-Oxley Act:

- Section 407, requiring the Commission to adopt rules: (1) requiring a company to disclose whether its audit committee includes at least one member who is a financial expert; and (2) defining the term ''financial expert'';
- Section 406, requiring the Commission to adopt rules requiring a company to disclose whether it has adopted a code of ethics for the company's senior financial officers, and if not, the reasons therefor, as well as any changes to, or waiver of any provision of, that code of ethics; and
- Section 404, requiring the Commission to adopt rules requiring a company's management to present an internal control report in the company's annual report containing: (1) A

[1] We do not edit personal information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

[2] 17 CFR 249.308.

[3] 17 CFR 249.310.

[4] 17 CFR 249.310b.

[5] 17 CFR 249.308a.

[6] 17 CFR 249.308b.

[7] 17 CFR 249.220f.

[8] 17 CFR 249.240f.

[9] 17 CFR 249.322.

[10] 17 CFR 240.12b–25.

[11] 17 CFR 240.13a–14.

[12] 17 CFR 240.13a–15.

[13] 17 CFR 140.15d–14.

[14] 17 CFR 240.15d–15.

[15] 15 U.S.C. 78a *et seq.*

[16] 17 CFR 228.10 *et seq.*

[17] 17 CFR 229.10 *et seq.*

[18] 17 CFR 210.1–01 *et seq.*

[19] 17 CFR 249.330; 17 CFR 274.101.

[20] 17 CFR 249.331; 17 CFR 274.128.

[21] 15 U.S.C. 80a–1 *et seq.*

[22] 17 CFR 270.30a–2.

[23] *See,* for example, John Waggoner and Thomas A. Fogarty, ''Scandals Shred Investors'' Faith: Because of Enron, Andersen and Rising Gas Prices, the Public Is More Wary Than Ever of Corporate America,'' USA Today, May 5, 2002, and Louis Aguilar, ''Scandals Jolting Faith of Investors,'' Denver Post, June 27, 2002.

[24] Pub. L. 107–204, 116 Stat. 745 (2002).

statement of the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and (2) an assessment, as of the end of the company's most recent fiscal year, of the effectiveness of the company's internal control structure and procedures for financial reporting. Section 404 also requires the company's registered public accounting firm [25] to attest to, and report on, management's assessment.

In connection with our proposed rules to implement the internal control report requirements included in section 404 of the Sarbanes-Oxley Act, we also propose several conforming revisions to our recently adopted certification rules and related requirements.[26]

II. Discussion of Proposals

A. Proposed Disclosure About Financial Experts Serving on a Company's Audit Committee

Many of the recent corporate scandals have centered on the quality of a company's financial disclosure. These events have, among other things, highlighted problems that can occur as a result of inadequate oversight of a company's management and auditors by the company's board of directors or audit committee. The Commission historically has encouraged companies to establish independent audit committees to oversee the work and independence of auditors. For example, in 1972 the Commission recommended that companies establish audit committees composed of outside directors.[27] Others have expressed their support for independent audit committees, including the National Commission on Fraudulent Financial Reporting, also known as the Treadway Commission,[28] and the General Accounting Office.[29] In 1999, we adopted rules requiring companies to disclose whether their audit committee members are independent, as defined by the relevant listing standards.[30]

In 1998, the New York Stock Exchange, Inc. (the ''NYSE'') and the National Association of Securities Dealers, Inc. (the ''NASD'') sponsored a committee to study the effectiveness of audit committees. This committee became known as the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (the ''Blue Ribbon Committee''). In its 1999 report, the Blue Ribbon Committee recognized the importance of the audit committee in overseeing the corporate accounting and financial controls and reporting of companies.[31] The Blue Ribbon Committee noted that, because of this important role, an audit committee has ''a more recognizable need for members with accounting and/or related financial expertise.'' Without some level of financial competence, members of an audit committee may be unable to adequately perform their vital corporate duties. In response to this report, the NYSE, the NASD,[32] the American Stock Exchange, Inc. (the ''AMEX'') and the Pacific Exchange, Inc. (the ''PCX'') adopted rules regarding the composition of listed companies'' audit committees.[33]

The NYSE's and the PCX's rules require at least one member of a listed company's audit committee to have ''accounting or related financial management expertise, as the Board of Directors interprets such qualification in its business judgment.'' [34] The NASD and the AMEX have similar rules that require each listed company to certify that it has, and will continue to have, at least one member of the audit committee that has past employment experience in finance or accounting, a professional certification in accounting, or comparable experience or background that demonstrates the individual's financial sophistication.[35] These rules provide, by way of example, that a person who is or has been a chief executive officer, chief financial officer or other senior corporate officer with financial oversight responsibilities satisfies this criterion. In addition, all four self-regulatory organizations require all members of the audit committee to be independent and to be (or soon become) financially literate, subject to limited exceptions.[36] While the NYSE and PCX rules permit a company's board of directors to interpret the financial literacy requirements, the NASD and AMEX rules define financial literacy as ''the ability to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement.'' [37]

Although the NYSE, NASD, AMEX and PCX already have rules regarding the financial expertise of audit committee members, not all companies that are required to file reports under Sections 13(a) and 15(d) of the Exchange Act are subject to these requirements. Furthermore, the Sarbanes-Oxley Act directs us to adopt rules defining the term ''financial expert'' and specifies several attributes that we must consider in crafting the definition. These attributes are more detailed and rigorous than those reflected in the current self-regulatory organization rules. Therefore, it is possible that a person who previously qualified as a financial expert under the broader guidelines included in the rules of the self-regulatory organizations may not have sufficient expertise and experience to be considered a financial expert under our proposed rules.[38] In particular, our

[25] The term ''registered public accounting firm'' is defined in section 2(a)(12) of the Sarbanes-Oxley Act to mean a public accounting firm registered with the Public Company Accounting Oversight Board (the ''PCAOB'') in accordance with the Sarbanes-Oxley Act.

[26] These include Exchange Act Rules 13a–14, 13a–15, 15d–14, 15d–15, Investment Company Act Rules 30a–2 and 30a–3, Item 307 of Regulations S–B and S–K and the forms of certification included in Forms 10–Q, 10–QSB, 10–K, 10–KSB, 20–F, 40–F, N–SAR and N–CSR.

[27] Accounting Series Release (ASR) 123 (March 23, 1972).

[28] *See* the Report of the National Commission on Fraudulent Financial Reporting (1987). This commission, also known as the Treadway Commission, was sponsored by the AICPA, the American Accounting Association, the Financial Executives Institute (now Financial Executives International), the Institute of Internal Auditor and the National Association of Accountants. Collectively, these groups were known as the Committee of Sponsoring Organizations, or COSO.

[29] GAO, ''CPA Audit Quality: Status of Actions Taken to Improve Auditing and Financial Reporting of Public Companies,'' at 5 (GAO/AFMD–89–38, March 1989).

[30] Release No. 34–42266 (Dec. 22, 1999) [64 FR 73389]. This release addressed numerous issues related to auditor independence.

[31] *See* Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (1999).

[32] The NASD rules referred to herein apply to NASDAQ listed companies.

[33] NYSE Rule 303.01, NASD Rule 4350(d)(2), AMEX Company Guide § 121 and PCX Equities Rule 5.3(b). *See* also Release No. 34–42233 (December 14, 1999) [64 FR 71529], Release No. 34–42231 (December 14, 1999) [64 FR 71523], Release No. 34–42232 (December 14, 1999) [64 FR 71518], and Release No. 34–43941 (February 7, 2001) [66 FR 10545] respectively.

[34] NYSE Rule 303.01 and PCX Rule 5.3(b).

[35] NASD Rule 4350(d)(2) and AMEX Company Guide § 121.

[36] For example, the NASD Manual states that audit committee members must become able to read and understand fundamental financial statements within a reasonable time after being appointed to the audit committee. Similarly, the NYSE listing standard require such appointees to become financially literate, as that term is interpreted by the board of directors, within a reasonable period of time after appointment. Therefore, these rules do not require that members be so qualified at the time of appointment. Also, in general, with respect to foreign private issuers, the self-regulatory organization rules accommodate differences in home country practices regarding, among other things, audit committee composition. The Sarbanes-Oxley Act does not exempt foreign private issuers from the financial expert disclosure requirements. Our proposed rules similarly do not include an exemption for foreign private issuers.

[37] *Id.*

[38] The NYSE has indicated that it will await the Commission's interpretation of the definition of the

Continued

proposed rules would require a financial expert to have experience preparing or auditing financial statements of a company that files reports with us and experience with internal controls and procedures for financial reporting (or similar expertise and experience in the board of directors' judgment). The proposed disclosure requirements regarding audit committee financial experts are described below.

1. Proposed Disclosure Requirements

We propose to add new Item 309 to Regulations S–K and S–B. In addition, we propose to add new Item 15(b) to Form 20–F and new Instruction B.(8) to Form 40–F. These proposed items would be identical in substance and entitled, ''Audit Committee Financial Experts.'' The proposed items would require companies to disclose:

- The number and names of persons that the board of directors has determined to be the financial experts serving on the company's audit committee; and
- Whether the financial expert or experts are ''independent,'' as that term is used in section 10A(m)(3) of the Exchange Act, and if not, an explanation of why they are not.[39]

If the company does not have a financial expert serving on its audit committee, the company must disclose that fact and explain why it has no financial expert. For purposes of the proposed disclosure, the term ''audit committee'' would be defined by section 3(a)(58) of the Exchange Act.[40]

Although the Sarbanes-Oxley Act does not specifically require disclosure of the number or names of the financial experts,[41] we believe that it is appropriate to propose these requirements. Investors likely would be interested in knowing how many financial experts a company's board has determined are serving on its audit committee, or whether it has determined that all of the audit committee members are financial experts. Furthermore, disclosure of the names of the company's financial expert or experts would assist investors in evaluating the company's annual report and proxy or information statement disclosure that describes the background and business experience of the company's directors.[42]

The primary benefit of having a financial expert serving on a company's audit committee is that the person, with his or her enhanced level of financial sophistication or expertise, can serve as a resource for the audit committee as a whole in carrying out its functions.[43] The mere designation of the financial expert should not impose a higher degree of individual responsibility or obligation on a member of the audit committee. Nor do we intend for the financial expert designation to decrease the duties and obligations of other audit committee members or the board of directors. Furthermore, in order to avoid any confusion in the context of section 11 of the Securities Act,[44] we do not intend for such a person to be considered an expert for purposes of section 11 solely as a result of his or her designation as a financial expert on the audit committee. The role of the financial expert is to assist the audit committee in overseeing the audit process, not to audit the company. A conclusion that a financial expert is an ''expert'' for purposes of section 11 might suggest a higher level of due diligence than is consistent with the audit committee's oversight responsibilities.

Section 407 of the Sarbanes-Oxley Act does not require disclosure of whether the financial expert is independent. However, we believe that such disclosure may be important to investors. Investors may be interested to know, for example, if the only financial expert on the audit committee is the company's chief financial officer or another individual who is responsible for, or participates in, the preparation of the company's financial statements. Therefore, we propose to require disclosure of whether the identified financial expert or experts on the audit committee are independent, as that term is used in section 10A(m)(3) of the Exchange Act, and if not, an explanation of why they are not. In addition, we intend to propose rules directing the national securities exchanges and national securities association to require a company to have a completely independent audit committee as a condition to listing.[45]

Some companies do not have boards of directors and therefore do not have board audit committees. For example, some limited liability companies and limited partnerships that do not have a corporate general partner may not have an oversight body that is the equivalent of an audit committee. It may be important to investors to be aware that such entities do not have such oversight bodies. Therefore, we do not propose to exempt these entities from the proposed financial expert disclosure requirements. If a limited liability company or limited partnership does not have a similar oversight body, it must explain that its organizational structure does not provide for such a body and that it therefore does not have an audit committee. We do, however, propose to exempt asset-backed issuers from this proposed disclosure requirement. Because of the nature of these entities, such issuers are subject to substantially different reporting requirements. Most significantly, such issuers are not required to file financial statements like other companies. Therefore, we do not believe disclosure of whether such companies have a financial expert on its audit committee would be of interest to investors.

Request for Comment

- Would investors benefit from disclosure of the number of the financial experts serving on the company's audit committee? Or would it suffice to require disclosure only of whether at least one financial expert serves on the audit committee?
- Do investors need to know the names of the financial experts on the audit committee? Would disclosure of the names discourage people from serving as financial experts on an audit committee?
- Should the Commission specifically address the issue of the degree of individual responsibility, obligation or liability under state or federal law of a person designated as a financial expert as a result of the designation? If the Commission should address this issue, how should it do so?
- Should we use a term other than ''financial expert''? For example, would

term ''financial expert'' before proposing amendments to its rules. *See* File No. SR–NYSE–2002–33 (pending before the Commission). The NASD has indicated that it intends to file rule proposals for the Nasdaq Stock Market with the Commission addressing similar issues. Although we will continue to work with the self-regulatory organizations to reconcile to the extent possible the various definitions of expert.

[39] 15 U.S.C. 78j–1(m)(3). The Sarbanes-Oxley Act amended the Exchange Act to add this section.

[40] Section 3(a)(58) of the Exchange Act, as amended by the Sarbanes-Oxley Act, defines the term ''audit committee'' as ''a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and * * * if no such committee exists with respect to an issuer, the entire board of directors of the issuer.'' 15 U.S.C. 78c(a)(58).

[41] The Sarbanes-Oxley Act only directs the Commission to adopt rules requiring disclosure of whether or not the audit committee has at least one member who is a financial expert and, if not, why. *See* section 407 of the Sarbanes-Oxley Act.

[42] *See* Item 401(e) of Regulation S–K and Item 401(a)(4) of Regulation S–B [17 CFR 229.401(e) and 228.401(a)(4)].

[43] *See* Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (1999).

[44] 15 U.S.C. 77k.

[45] *See* section 301 of the Sarbanes-Oxley Act.

the term ''audit committee financial expert'' be a more appropriate title?

• Is there other relevant information about the financial expert or experts that a company should have to disclose? For example, should we expand the disclosure required under Item 401(e) of Regulations S–K and S–B, as it relates to directors that the company has determined to be financial experts? If so, how?

• Should we require disclosure of whether the financial experts are independent, as proposed? If so, should we define ''independent'' in the same manner as the term is used in section 10A(m)(3) of the Exchange Act?

• Should we incorporate an independence requirement into the definition of ''financial expert'' so that any designated financial expert must be independent to qualify under the definition?

2. Proposed Definition of ''Financial Expert''

The Sarbanes-Oxley Act requires the Commission, in defining the term ''financial expert,'' to consider whether a person has, through education and experience as a public accountant or auditor or a principal financial officer, controller,[46] or principal accounting officer of an issuer, or from a position involving the performance of similar functions:

(1) An understanding of generally accepted accounting principles and financial statements;

(2) Experience in: (a) The preparation or auditing of financial statements of generally comparable issuers; and (b) the application of such principles in connection with the accounting for estimates, accruals, and reserves;

(3) Experience with internal accounting controls; and

(4) An understanding of audit committee functions.

The ''financial expert'' definition included in the proposed rules incorporates these four ''attributes'' with several modifications.[47] We also propose to require the financial expert's experience to be related to companies that were, at the time he or she held the position, publicly reporting companies. We believe this requirement is appropriate because a person with experience as a principal financial officer or principal accounting officer of a private company may not have been exposed to the reporting requirements of public companies.

Moreover, the proposed definition states that the board of directors can conclude that a person is a financial expert if, in lieu of having experience as a public accountant, auditor, principal financial officer, principal accounting officer, or controller, or experience in a position involving the performance of similar functions, the person has experience in a position that results, in the judgment of the board of directors, in the person having similar expertise and experience. If the board makes such a determination, it would be required to disclose the basis for that determination. To qualify as a financial expert, a person would, in all cases, have to possess all of the attributes listed in the proposed definition.

The instructions to proposed Item 309 of Regulations S–K and S–B would therefore define the term ''financial expert'' to mean a person who has, through education and experience as a public accountant or auditor or a principal financial officer, controller, or principal accounting officer of a company that, at the time the person held such position, was required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act, or experience in one or more positions that involve the performance of similar functions (or that results, in the judgment of the company's board of directors, in the person's having similar expertise and experience), the following attributes:

a. An understanding of generally accepted accounting principles and financial statements;

b. Experience applying such generally accepted accounting principles in connection with the accounting for estimates, accruals, and reserves that are generally comparable to the estimates, accruals and reserves, if any, used in the registrant's financial statements;

c. Experience preparing or auditing financial statements that present accounting issues that are generally comparable to those raised by the registrant's financial statements;

d. Experience with internal controls and procedures for financial reporting;[48] and

e. An understanding of audit committee functions.

In determining whether a potential financial expert has all of the requisite attributes, the board of directors[49] must evaluate the totality of an individual's education and experience.[50] The company should consider a variety of factors in making that evaluation, including:

• The level of the person's accounting or financial education, including whether the person has earned an advanced degree in finance or accounting;

• Whether the person is a certified public accountant, or the equivalent, in good standing, and the length of time that the person actively has practiced as a certified public accountant, or the equivalent;

• Whether the person is certified or otherwise identified as having accounting or financial experience by a recognized private body that establishes and administers standards in respect of such expertise, whether that person is in good standing with the recognized private body, and the length of time that the person has been actively certified or identified as having this expertise;

• Whether the person has served as a principal financial officer, controller or principal accounting officer of a company that, at the time the person held such position, was required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act, and if so, for how long;

[46] The Sarbanes-Oxley Act uses the term ''comptroller.'' It is our understanding that a comptroller position generally is the position in a government agency or non-profit organization with oversight responsibilities for the agency's or organization's primary accounting function. We believe that for-profit organizations typically use the term ''controller'' to describe this function. Therefore, throughout this release, we have used the term ''controller'' instead of the term ''comptroller.''

[47] *See* Instructions 1–4 to proposed Item 309 of Regulations S–K and S–B. In particular, we propose to break the four attributes into five attributes and several changes to clarify that the required attributes include experience applying generally accepted accounting principles in connection with the accounting for estimates, accruals and reserves that are generally comparable to those, if any, used in the company's financial statements, and experience preparing or auditing financial statements that present accounting issues that are generally comparable to those raised by the company's financial statements.

[48] Section 407 of the Sarbanes-Oxley Act states that, among other attributes, the SEC, in defining the term ''financial expert,'' should consider whether a person has experience with internal accounting controls. This release proposes rules under section 404, which would require an annual report by management evaluating the effectiveness of its internal controls and procedures for financial accounting (a defined term). We believe that this term has substantially the same meaning as ''internal accounting controls'' in section 407. Therefore, we propose to use the newly defined term for consistency.

[49] *See* section II.A.3., Determination by the Board of Directors of Who Is a Financial Expert, below.

[50] This approach is consistent with the approach taken in NASD and NYSE rules. The NASD requires each issuer to have ''at least one member of the audit committee that has past employment experience in finance and accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.'' NASD Rule 4350(d)(2)(A). Similarly, the NYSE requires at least one member who has ''accounting or related financial management expertise.'' NYSE Listed Company Manual 303.01. Both of these provisions focus on the level of expertise without providing any mechanical formula for determining whether an individual has the requisite expertise.

• The person's specific duties while serving as a public accountant, auditor, principal financial officer, controller, principal accounting officer or position involving the performance of similar functions;

• The person's level of familiarity and experience with all applicable laws and regulations regarding the preparation of financial statements that must be included in reports filed under section 13(a) or 15(d) of the Exchange Act;

• The level and amount of the person's direct experience reviewing, preparing, auditing or analyzing financial statements that must be included in reports filed under section 13(a) or 15(d) of the Exchange Act;

• The person's past or current membership on one or more audit committees of companies that, at the time the person held such membership, were required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act;

• The person's level of familiarity and experience with the use and analysis of financial statements of public companies; and

• Whether the person has any other relevant qualifications or experience that would assist him or her in understanding and evaluating the registrant's financial statements and other financial information and to make knowledgeable and thorough inquiries whether:

• The financial statements fairly present the financial condition, results of operations and cash flows of the company in accordance with generally accepted accounting principles; and

• The financial statements and other financial information, taken together, fairly present the financial condition, results of operations and cash flows of the company.

In the case of a foreign private issuer, the board of directors also should consider the person's experience with public companies in the foreign private issuer's home country, generally accepted accounting principles used by the issuer, and the reconciliation of financial statements with U.S. generally accepted accounting principles.

This is not intended to be an exhaustive list of the factors that the board of directors should consider in assessing whether a person qualifies as a financial expert. Moreover, the proposed rules do not specify the number of listed factors that a financial expert should satisfy; satisfaction of any specific number of factors would be neither necessary nor sufficient for a person to be considered a financial expert. Most of these factors require a qualitative assessment of a potential expert's level of knowledge or experience.

The fact that a person previously has served on an audit committee would not, by itself, justify the board of directors in ''grandfathering'' that person as a financial expert under our proposed definition. Similarly, the fact that a person has experience as a public accountant or auditor, or a principal financial officer, controller or principal accounting officer or experience in a similar position would not, by itself, justify the board of directors in deeming the person to be a financial expert. The board of directors would have to confirm that these persons have the requisite attributes and the right mix of education and experience.

Some individuals who are particularly knowledgeable and experienced in accounting and financial issues may have the requisite attributes and mix of knowledge and experience to qualify as financial experts, even though they may not have served in one of the specifically identified positions. The board of directors would have to determine whether an individual's qualifications, in the aggregate, satisfy the financial expert definition.

Because of the significant role the audit committee plays in the filing of a public company's financial statement, including the preparation and filing of their own report, we would find it hard to believe that an accountant serving as a financial expert on an audit committee would not be practicing before the Commission.[51] Therefore, any accountant, while suspended or barred from practice under Rule 102(e)[52] of the Commission's Rules of Practice, generally would not be eligible to serve as a financial expert.

Request for Comment

• Should we modify the proposed definition of ''financial expert'' in any way? If so, how?

• Should we require a financial expert to have direct experience preparing or auditing financial statements of reporting companies? Should experience reviewing or analyzing such financial statements suffice? If so, why?

• Should a financial expert have to possess all of the ''attributes'' listed in the proposed definition? Should we broaden the scope of individuals who may qualify as such an expert?

• Do the five attributes adequately describe the qualities that a financial expert should have? Should we add any attributes?

• Although we do not intend for the list of factors that a company should consider in assessing a potential financial expert's qualifications to be exhaustive, should we add any factors to the list? If so, what other factors should we include? Conversely, should we delete any proposed factors from the list? If so, which factors should we delete?

• Should the proposed rules provide for a different standard or methodology for assessing a financial expert's qualifications? If so, describe the preferred standard or methodology.

3. Determination by the Board of Directors of Who Is a Financial Expert

The Sarbanes-Oxley Act does not explicitly state who at the company should determine whether any of the audit committee members is a financial expert. Management is responsible for preparing the financial statements. Therefore, it seems inappropriate for management to assess the qualifications of audit committee members. Similarly, it does not seem appropriate for the members of the audit committee, alone, to assess their own qualifications. We believe that the board of directors in its entirety, as the most broad-based body within the company, is best-equipped to make the decision. Therefore, we propose to require the company to disclose the number and names of the persons that the board of directors has determined to be the financial expert or experts serving on the company's audit committee.

Certain foreign private issuers have a two-tier board, with one tier designated as the management board and the other tier designated as the supervisory or non-management board. In this circumstance, we believe that the supervisory or non-management board would be the body within the company that is best-equipped to make the decision.

Request for Comment

• Will investors find this information useful? Is there more useful information on how financial experts are determined?

• Should our rules require the company to disclose the persons who are responsible for making the financial expert determination on behalf of the company? Is the board of directors the appropriate body to make such determination?

4. Impracticability of a ''Bright-Line'' Test

We considered, but do not propose, a ''bright-line'' test for making the financial expert determination that

[51] *See* 17 CFR 201.102(f).

[52] *See* 17 CFR 201.102(e).

eliminates all elements of subjectivity. We do not believe that such a test would best further the purposes of the statute. Our proposed ''financial expert'' definition requires a qualifying individual to possess all of the specified attributes, and in that respect, does provide somewhat of a ''bright-line'' by setting forth several fairly specific and objective standards to limit the pool of potential financial expert candidates. The ''factors'' also provide guidance to assist the board of directors in making the financial expert determination. Clearly, certain factors such as level of education and years spent in a financial position are important indicia of whether an individual has such knowledge and experience.

However, we are not convinced that any bright-line rule or fixed formula that requires a financial expert to have specific academic credentials or a specific number of years of service in a financial or accounting position can ensure that an individual has the level of understanding and experience required by the statute. As the Blue Ribbon Committee stated regarding corporate governance and audit committees, ''one size doesn't fit all.'' [53] Indeed, the more complicated the business, the greater the need for a higher threshold of financial expertise. Therefore, we believe that a bright-line test would be inappropriate for such determinations.

Request for Comment

- Should we create a bright-line test for the definition of ''financial expert''? If so, what should the test be?

5. Location of Disclosure

The Sarbanes-Oxley Act expressly states that companies must include the financial expert disclosure in their periodic reports required pursuant to section 13(a) or 15(d) of the Exchange Act. We propose to require companies to include the new disclosure in their annual reports on Forms 10–K [54] and 10–KSB.[55] We do not propose to require companies to also include this disclosure in their quarterly reports because we think that annual disclosure would adequately fulfill investors' informational needs. In this regard, we note that our pending Form 8–K proposals would require a company to disclose the arrival or departure of a director.[56] This information would be included in part III of those forms. Consequently, the company could incorporate this information by reference from its definitive proxy or information statement that involves an election of directors, if the company voluntarily chooses to include this information in its proxy or information statement and then files such statement with the Commission no later than 120 days after the end of the fiscal year covered by the Form 10–K or 10–KSB.[57] We also propose to require this disclosure in annual reports filed by a foreign private issuer on Form 20–F [58] and by a Canadian issuer on Form 40–F.[59]

Request for Comment

- Should we also require the proposed financial expert disclosure to appear in the company's proxy or information statement? Is this information relevant to a security holder's decision to vote for a particular director or to elect, approve or ratify the choice of an independent public accountant?
- Should we require the company to also disclose this information in its quarterly reports?
- Should we also require such disclosure in registration statements filed under the Securities Act?
- Should the company have to disclose specifically the arrival or departure of a financial expert promptly after the occurrence of the event? If so, should we modify our Form 8–K proposed item regarding the arrival and departure of a director to also require a company to disclose whether the departing director was, or arriving director will be, a financial expert serving on the company's audit committee? Should a company make appropriate disclosures if: a financial expert leaves the audit committee, but remains on the board of directors; or an existing director joins the audit committee as a financial expert? Should a company only have to file a Form 8–K if it previously disclosed in its annual report that it had a financial expert and now has none?
- A company currently may not have an audit committee member who qualifies as a financial expert under the proposed definition but may intend to seek one. In such a case, the proposed rules would require a company to disclose that it does not have a financial expert on its audit committee. However, the company could explain that it is searching for a qualified individual to serve on its audit committee. Should we provide companies with a transition period to find such a person? If so, what would be an appropriate transition period?

6. Registered Investment Companies

We are proposing to implement section 407 of the Sarbanes-Oxley Act with respect to registered management investment companies by adding disclosure requirements similar to those in proposed Item 309 of Regulation S–K to proposed Form N–CSR.[60] Proposed Item 4 of Form N–CSR would require a registered management investment company to disclose annually: (i) The number and names of persons that the board of directors has determined to be the financial experts serving on the investment company's audit committee; (ii) whether the financial expert or experts are independent, and if not, an explanation of why they are not; and (iii) if the investment company does not have a financial expert serving on its audit committee, the fact that there is no financial expert and an explanation of why it has no financial expert.[61] In addition, the investment company would be required to disclose the basis for a determination by its board of directors that a person is a financial

[53] *See* Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees, at 7 (1999).

[54] Referenced in 17 CFR 249.310.

[55] Referenced in 17 CFR 249.310b.

[56] Therefore if, for example, a director who is the audit committee financial expert resigned or was removed from the board one month after the company filed its annual report, the company would have to disclose this event on a Form 8–K filed within two business days after the director's departure. *See* Release No. 33–8106 (June 17, 2002) [67 FR 42914]. The proposals in that release have not yet been adopted. The proposals do not require disclosure of whether the departing director is a financial expert. We are seeking comment on whether we should require such disclosure.

[57] *See* General Instruction E(3) to Form 10–KSB [17 CFR 249.310b] and General Instruction G(3) to Form 10–K [17 CFR 249.310].

[58] Referenced in 17 CFR 249.220f.

[59] Referenced in 17 CFR 249.240f.

[60] Referenced in 17 CFR 249.331 and 274.128. A management investment company is an investment company other than a unit investment trust or face-amount certificate company. *See* section 4 of the Investment Company Act [15 U.S.C. 80a–4]. A unit investment trust (''UIT'') is ''an investment company which (A) is organized under a trust indenture, contract of custodianship or agency, or similar instrument, (B) does not have a board of directors, and (C) issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities; but does not include a voting trust.'' Section 4(2) of the Investment Company Act [15 U.S.C. 80a–4(2)]. A face-amount certificate company is an investment company that engages or proposes to engage in the business of issuing certain face-amount certificates. Section 4(1) of the Investment Company Act [15 U.S.C. 80a–4(1)].

[61] The proposed amendments would add similar disclosure requirements applicable to small business investment companies (''SBICs'') to Item 102P3 of Form N–SAR. Proposed Instruction (b) to Item 102P3 of Form N–SAR (referenced in 17 CFR 249.330 and 274.101). SBICs are investment companies that are licensed as SBICs under the Small Business Investment Act of 1958. We are proposing to add financial expert disclosure requirements for SBICs to Form N–SAR because SBICs would not be required to file reports on proposed Form N–CSR.

expert if, in lieu of having experience as a public accountant, auditor, principal financial officer, principal accounting officer, or controller, or experience in a position involving the performance of similar functions, the person has experience in a position that results, in the judgment of the board, in the person having similar experience and expertise.[62] We are proposing the same definition of ''financial expert'' for investment companies as for operating companies, except that we are not including the factor relevant to foreign private issuers.[63]

A financial expert would be considered to be ''independent'' if he or she: (i) meets the criteria set forth in section 10A(m)(3)(B)(i) of the Exchange Act; and (ii) is not an ''interested person'' of the investment company as defined in section 2(a)(19) of the Investment Company Act of 1940.[64] We have substituted the section 2(a)(19) test for the criteria set forth in section 10A(m)(3)(B)(ii) of the Exchange Act, which would apply to operating companies and require that the audit committee member not be an affiliated person of the issuer or any subsidiary in order to be considered ''independent.'' The section 2(a)(19) test is more appropriate for registered investment companies because it is tailored to capture the broad range of affiliations with investment advisers, principal underwriters, and others that are relevant to ''independence'' in the case of investment companies.

The proposed disclosure requirements would apply to all registered management investment companies, regardless of whether they are required to file reports under section 13(a) or 15(d) of the Exchange Act. They would not apply to unit investment trusts, which are unmanaged investment companies that hold specified securities and, unlike managed investment companies, are not required to provide shareholder reports containing audited financial statements.

Request for Comment

- Should the definition of ''financial expert'' be modified for investment companies? Are the factors that are relevant in determining whether someone is a ''financial expert'' different for investment companies?
- What definition of ''independence'' should the disclosure requirements apply with respect to financial experts? Should the definition incorporate the criteria set forth in section 10A(m)(3)(B)(i) of the Exchange Act and section 2(a)(19) of the Investment Company Act, as proposed, or a different test, for example, the test used for operating companies?
- Should disclosure with respect to financial experts on an investment company's audit committee be required annually, as proposed? Should this disclosure be required on each report on Form N–CSR or N–SAR, *i.e.*, semi-annually?
- For investment companies that would be required to file reports on proposed Form N–CSR, should the financial experts disclosure be required on Form N–CSR or Form N–SAR? Should small business investment companies, which otherwise would not be required to file proposed Form N–CSR, be required to use Form N–CSR for this purpose?

B. Proposed Code of Ethics Disclosure

1. Proposed Rules Compared to Section 406 of the Sarbanes-Oxley Act

Section 406(a) of the Sarbanes-Oxley Act directs the Commission to issue rules requiring a company that is subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act to disclose whether or not the company has adopted a code of ethics for its senior financial officers that applies to the company's principal financial officer and controller or principal accounting officer, or persons performing similar functions. The Sarbanes-Oxley Act states that the rules also must require companies that have not adopted such a code of ethics to explain why they have not done so.

The Act defines the term ''code of ethics,'' as used in section 406, to mean such standards as are reasonably necessary to promote:

- Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;
- Full, fair, accurate, timely and understandable disclosure in the periodic reports required to be filed by the issuer; and
- Compliance with applicable governmental rules and regulations.

Section 406(b) of the Sarbanes-Oxley Act further directs the Commission to require a company subject to the Exchange Act reporting requirements to immediately disclose on Form 8–K, or by Internet or other electronic means of dissemination, any change in, or waiver of, a provision of its code of ethics for its senior financial officers.

Although section 406 of the Sarbanes-Oxley Act focuses on whether or not a company has adopted a code of ethics applicable to its senior financial officers, we believe that it is appropriate to propose rules that also apply to a company's principal executive officer. Investors not only have an interest in knowing whether a public company holds its senior financial officers to certain ethical standards, but also whether a public company holds its principal executive officer to ethical standards as well. Therefore, we believe that it is consistent with the purposes of the Sarbanes-Oxley Act to extend the scope of section 406 to also include a company's principal executive officer. Specifically, we propose to require a company to disclose whether it has adopted a written code of ethics that applies to its principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. We also propose to broaden the definition of the term ''code of ethics'' used in section 406 of the Sarbanes-Oxley Act to include three additional factors described in more detail below.

2. Description of the Proposed Code of Ethics Disclosure Requirements

We propose to add new Item 406 to Regulations S–B and S–K, new Item 15(c) to Form 20–F and new Instruction B.(9) to Form 40–F to require a company subject to the Exchange Act reporting requirements to disclose:

- Whether the company has adopted a written code of ethics that applies to the company's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions;[65] and
- If the company has not adopted such a code of ethics, the reasons it has not done so.

For purposes of this new disclosure item, we would define the term ''code of ethics'' to mean a codification of standards that is reasonably designed to deter wrongdoing and to promote:[66]

(1) Honest and ethical conduct, including the ethical handling of actual

[62] Proposed Instruction 3 to Item 4 of proposed Form N–CSR; proposed Instruction (b)(3) to Item 102P3 of Form N–SAR.

[63] Proposed Instructions 2 and 4 to Item 4 of proposed Form N–CSR.

[64] Proposed Item 4 of proposed Form N–CSR.

[65] We expect that many companies already have a code of ethics that applies to these officers, as well as additional officers, directors and employees. We encourage companies to apply the code of ethics to as broad a spectrum of personnel and affiliates as practicable.

[66] The Sarbanes-Oxley Act section 406(c) definition of the term ''code of ethics'' does not include the phrase ''to deter wrongdoing'' that we have incorporated into proposed Item 406 of Regulations S–K and S–B, but we think that it is appropriate to expand the definition in this manner. Although codes of ethics typically are designed to promote high standards of ethical conduct, they also generally seek to instruct those to whom they apply as to improper or illegal conduct or activity and to prohibit such conduct or activity.

or apparent conflicts of interest between personal and professional relationships;

(2) Avoidance of conflicts of interest, including disclosure to an appropriate person or persons identified in the code [67] of any material transaction or relationship that reasonably could be expected to give rise to such a conflict;

(3) Full, fair, accurate, timely, and understandable disclosure in reports and documents that a company files with, or submits to, the Commission and in other public communications made by the company;

(4) Compliance with applicable governmental laws, rules and regulations; [68]

(5) The prompt internal reporting to an appropriate person or persons identified in the code of violations of the code; [69] and

(6) Accountability for adherence to the code.

The second, fifth and sixth prongs of this proposed definition supplement the requirements specified by section 406 of the Sarbanes-Oxley Act. We believe that these items are consistent with the objectives of that section. A comprehensive code of ethics should set forth guidelines requiring avoidance of conflicts of interests and material transactions or relationships involving potential conflicts of interests without proper approval. Moreover, an effective code of ethics should describe the company's system for the internal reporting of code violations.[70] The code also should state clearly the consequences for non-adherence to code provisions.

In addition to providing the required disclosure, a company also would have to file a copy of its ethics code as an exhibit to its annual report.[71] We believe investors would find such disclosure useful.

Request for Comment

- Should the rules address whether a company has a code of ethics that applies to its principal executive officer, as proposed, or should the rules track the language of section 406 of the Sarbanes-Oxley Act and require a company only to disclose whether it has a code of ethics that applies to its senior financial officers?
- Should we expand the definition of ''code of ethics,'' as proposed, or should the definition adhere to the language in section 406(c) of the Sarbanes-Oxley Act? Are there other ethical principles that should be included in the definition?
- Should the rules cover a broader group of officers? If so, which group of officers should they cover? Should the general counsel be covered? Should all executive officers be covered? [72]
- Should the proposed rules require a company to disclose whether it has a code of ethics that applies to its directors? Do most companies have a code of ethics that applies to the board of directors? Does the same code of ethics generally apply to the company's executive officers and its directors?
- Should we require the company to describe its procedures to ensure compliance with the code of ethics?
- Should we require the company to describe its procedures for granting a waiver from a provision of its code of ethics?
- Should we require the company to disclose the date of adoption of its code of ethics and the date of the most recent update or the company's frequency of review of the code?
- Should the company have to file the code of ethics as an exhibit to its annual report as proposed? If not, should we also require the company to describe the principal topics that the code addresses?
- Should we require disclosure regarding the existence of a code of ethics in our other reports and registration statements, including our Securities Act and Exchange Act registration statements?

3. Content of the Code of Ethics

The proposed rules do not specify every detail that the company must address in its code of ethics, or prescribe any specific language that the code of ethics must include. They further do not specify the procedures that the company should develop, or the types of sanctions that the company should impose, to ensure compliance with its code of ethics. We believe that ethics codes do, and should, vary from company to company and that decisions as to the specific provisions of the code, compliance procedures and disciplinary measures for ethical breaches are best left to the company. In addition, such an approach is consistent with our disclosure-based regulatory scheme.

Many companies already maintain codes of ethics or conduct.[73] These codes often contain specific policies and restrictions addressing, among other things, such issues as insider trading and conflicts of interest. The proposed rules would not require a company to adopt a code of ethics if it has not already done so, or to amend its existing code of ethics, but they would require a company that does not have a code of ethics that meets the definition in the rule for the specified officers to explain why it does not have such a code. A pre-existing ethics code may satisfy the requirements of proposed Item 406, but a company should review its code upon our adoption of final rules to determine whether the code meets all of the standards included in the rules' definition of a ''code of ethics.'' If a company has a code, but it does not satisfy all parts of the definition, the company would not be able to affirm that it has the type of code contemplated by the rules.

4. Types of Companies That Would Be Subject to the Proposed Code of Ethics Disclosure Requirements and Location of the Disclosure

All companies that file Form 10–K or 10–KSB reports would be subject to the proposed disclosure requirement.[74] We

[67] Under our proposal, although the company would retain discretion to determine the identity of the appropriate person or persons, such person should not be involved in the matter giving rise to the conflict of interest. Furthermore, we believe the person identified in the code should have sufficient status within the company to engender respect for the code and the authority to adequately deal with the persons subject to the code regardless of their stature in the company.

[68] We propose to add ''laws'' to this prong of the proposed definition. The Sarbanes-Oxley Act section 406(c) definition refers only to compliance with applicable governmental rules and regulations. This language also is intended to ensure compliance with other provisions of the Sarbanes-Oxley Act, including ''up-the-ladder'' reporting by lawyers, ''whistleblower'' protection and the enhanced conflict of interest provisions.

[69] The concerns regarding the identification of appropriate persons for the reporting of potential conflicts of interest discussed above would similarly apply to the reporting of violations of the code.

[70] There are a number of provisions in the Sarbanes-Oxley Act that require internal reporting of events. We believe that it is incumbent upon public companies to coordinate these requirements.

[71] *See* proposed Item 601(b)(14) of Regulations S–K and S–B. Section 406 of the Sarbanes-Oxley Act does not state that our rules must require a company to file a copy of the code of ethics as an exhibit to its annual report, but we think investors may be interested in examining the actual code itself, given that codes are likely to vary significantly from one company to another.

[72] Exchange Act Rule 3b–7 [17 CFR 240.3b–7] defines the term ''executive officer'' as a registrant's president, any vice president of the registrant in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function or any other person who performs similar policy-making functions for the registrant. Executive officers of subsidiaries may be deemed executive officers of the registrant if they perform such policy-making functions for the registrant.

[73] On August 16, 2002, NYSE submitted proposed new listing standards that would, among other things, require all NYSE listed companies to adopt a code of business conduct and ethics consistent with the principles enumerated in the listing standards. *See* File No. SR–NYSE–2002–33. The NASD has indicated that it intends to propose new listing standards that would require a code of conduct for NASDAQ listed companies.

[74] This disclosure would be required by Item 10 of Form 10–K and Item 9 of Form 10–KSB.

also propose to require this disclosure in annual reports filed by a foreign private issuer on Form 20–F and by a Canadian issuer on Form 40–F.

Request for Comment

• Should we require a company to also provide the proposed code of ethics disclosure in its quarterly reports? Should such disclosure be made in a company's proxy and information statements? Should it be disclosed in Securities Act registration statements?

• Should the requirement apply to foreign private issuers, as proposed? If not, why?

5. Proposed Form 8–K or Internet Disclosure Regarding Changes to, or Waivers From, the Code of Ethics

Section 406(b) of the Sarbanes-Oxley Act directs us to require ''immediate disclosure'' by a company of any change to, or waiver from, the company's code of ethics for its senior financial officers.[75] As discussed above, we propose to require the basic ethics code disclosure with respect to a company's principal executive officer as well as to its senior financial officers. We therefore also propose to require current disclosure regarding changes to, or the company's grant of a waiver from, a provision of the code of ethics that applies to these same persons.

On June 17, 2002, we proposed amendments to Form 8–K that would expand significantly the number of disclosure items triggering a Form 8–K filing requirement and accelerate the Form 8–K filing deadline.[76] In those proposals, we stated that we were reviewing possible changes by self-regulatory organizations to their corporate governance provisions, including changes that would require a company to promptly disclose any revision that it makes to its code of ethics, or ethics waiver that it grants.

In light of the directive in section 406(b), we propose to add an item to the list of Form 8–K triggering events to require disclosure of the following:

• A change to a company's code of ethics that applies to the specified officers; or

• A grant of a waiver of an ethics code provision to a specified officer.[77]

If choosing to provide the required disclosure on Form 8–K, the company would have to file the report within two business days after it made the change or granted the waiver.[78] As an alternative to reporting this information on Form 8–K, section 406(b) of the Sarbanes-Oxley Act contemplates a company's use of the Internet as a method of disseminating this disclosure.[79] Many companies maintain websites to provide information about themselves to the public. A company's website is often an obvious place for investors to find information about a company.[80] We therefore propose to allow a company to use its own Internet website, if it has a website, as an alternative means of disseminating the proposed required disclosure about changes in, or waivers from, its code of ethics.[81] Under the proposed rules, a company would be able to take advantage of the Internet dissemination option only if it had disclosed in its most recently filed annual report on Form 10–K or 10–KSB:[82]

• That it intends to disclose these events on its Internet website, and

• Its Internet website address.

If a company elects to disclose this information on its website, it would have to do so within the same two-business day time period that we propose to require for Form 8–K filings. In addition, we propose that a company electing to provide disclosure in this manner would have to make the disclosure available on its website for a period of at least 12 months after it initially posts the disclosure. Although the proposed rules would permit a company to remove information from its website after the 12-month posting period, we propose to require the company to retain this disclosure for a period of not less than five years and to make it available to the Commission or its staff upon request.[83] We propose a 12-month period because we believe that it would be inappropriate to allow a company to comply with this provision by only briefly posting the disclosure on its website. Reports on Form 8–K are available to the public indefinitely after filing with the Commission.

Request for Comment

• Are there any privacy concerns that we should consider that would warrant narrowing the disclosure requirements regarding a grant of a waiver from the code?

• Is a ''waiver'' a sufficiently distinct and formal event that the obligation to disclose will not present any difficulties of interpretation? Should we modify the requirement to ensure that ''*de facto, post hoc*'' waivers of codes'granted or acceded to after the occurrence of the ''violation'' are reported?

• Should companies that use the Internet for these disclosures also be required to have technology that allows investors to be notified by e-mail when new information is posted to the website?

• Should we require the filing of a Form 8–K regardless of whether a company provides the proposed disclosure on its website? Do investors need access to this information for longer than 12 months? How can we permit Internet disclosure and maintain a lasting public record of the information?

• Should we specify where and how this disclosure should appear on a company's website if the company opts for the website method of dissemination?

• Are there other means of electronic dissemination that our proposed rules should permit?

• Should we require a company choosing to disclose information about ethics code changes or waivers through its Internet website to provide advance notice in the company's annual report of its intent to satisfy the disclosure requirements in this manner, as proposed?

• Should we require all Exchange Act reporting companies to disclose their website addresses? If so, should we

[75] Under the proposed rules this would also include an implicit waiver due to inaction on the part of the company with respect to a reported or known violation of a code provision.

[76] *See* Release No. 33–8106 (June 17, 2002) [67 FR 42914].

[77] *See* proposed Item 5.05 to Form 8–K. In Release No. 33–8106, we proposed to reorganize and renumber the Form 8–K items as part of our Form 8–K proposals. The proposed Item 5.05 designation is consistent with the renumbering scheme proposed in that release.

[78] A two business day filing period is consistent with the accelerated filing deadline that we proposed in Release No. 33–8106.

[79] Section 406(b) of the Sarbanes-Oxley Act states that our rules should require a company to report this disclosure on Form 8–K or by ''dissemination by the Internet or by other electronic means.'' Our proposed rules would permit optional dissemination of the required disclosure through the company's website; it is not clear whether there are ''other electronic means'' that would result in widespread dissemination of the disclosure that would be accessible by a company's investors and potential investors. This release seeks comment on that issue.

[80] We are allowing website disclosure in these limited circumstances consistent with the terms of section 406 of the Sarbanes-Oxley Act. The present proposal does not indicate that the Commission deems website postings as sufficient to broadly and simultaneously disseminate information to the public in other contexts.

[81] A company choosing to post proposed disclosure about a change to its code of ethics on its website also would have to post a copy of the amended provision on its website.

[82] *See* proposed Item 406(b) of Regulations S–K and S–B. Because investors may not expect these disclosures to be made on the company's website in lieu of a Form 8–K filing, we are proposing to require a company to provide investors with advance notice that it may choose to use this option. Otherwise, investors may be confused regarding the location of this disclosure.

[83] Proposed Item 406 of Regulations S–B and S–K.

specify the location of this disclosure? For example, should it have to appear on the front cover of all periodic and current reports, along with the company's street address? Should a company have to disclose its website address in, or on the front cover of, all of its Exchange reports? Proxy and information statements? Exchange Act registration statements? Securities Act registration statements?

Foreign Private Issuers

Foreign private issuers are not required to file current reports on Form 8–K.[84] Instead, they are required to file under the cover of Form 6–K [85] copies of all information that the foreign private issuer: makes, or is required to make, public under the laws of its jurisdiction of incorporation; files, or is required to file, under the rules of any stock exchange; or otherwise distributes to its security holders.[86] We do not propose to change these reporting requirements. We are proposing changes to Form 20–F and 40–F that would require a foreign private issuer to disclose any change to its code of ethics made during the foreign private issuer's past fiscal year that applies to the foreign private issuer's senior officers. The foreign private issuer additionally would have to file the change as an exhibit to Form 20–F or 40–F. Under the proposals, a foreign private issuer also would have to disclose any grant of a waiver from the code by the company to one of these officers, that occurred during the foreign private issuer's last fiscal year. A foreign private issuer could also make the disclosure under cover of a Form 6–K or on its Internet website. We plan to strongly encourage foreign private issuers to make these disclosures promptly.

Request for Comment

• Should we require foreign private issuers to file disclosure about ethics code changes and waivers within two days under cover of Form 6–K? Should we otherwise require a foreign private issuer to promptly disclose ethics code changes and waivers?

6. Registered Investment Companies

We are proposing to amend Forms N–SAR and N–CSR to require a registered investment company to:

• Disclose annually whether each of the investment company, its investment adviser, and its principal underwriter has adopted a written code of ethics that applies to the principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions of, respectively, the investment company, its investment adviser, and its principal underwriter;[87]

• If the investment company, its investment adviser, or its principal underwriter has not adopted a code of ethics, explain why it has not done so;[88]

• If the investment company, its investment adviser, or its principal underwriter has, during the period covered by the report, amended or granted a waiver from any code of ethics applicable to the investment company's, investment adviser's, or principal underwriter's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, provide a brief description of the amendment or waiver in the investment company's report on proposed Form N–CSR or Form N–SAR, as applicable. In the alternative, the investment company may disclose this information on its Internet website within two business days after the occurrence of the amendment or waiver, if the investment company has disclosed in its most recently filed report on Form N–SAR or N–CSR its intention to provide disclosure in this manner and its Internet address, it makes the information available on its website for a 12-month period, and it retains the information for a period of not less than six years following the end of the fiscal year in which the amendment or waiver occurred; [89] and

• Include any written code of ethics and amendment to that code of ethics as an exhibit to the investment company's reports on Form N–CSR or N–SAR.[90]

The proposed disclosure requirements would apply to all registered investment companies, regardless of whether they are required to file reports under section 13(a) or 15(d) of the Exchange Act. Management investment companies generally would provide the required disclosure on proposed Form N–CSR, and small business investment companies and unit investment trusts would provide the required disclosure on Form N–SAR.[91] The proposed amendments would apply the same definition of a code of ethics that we are proposing for operating companies.[92]

We recognize that Investment Company Act Rule 17j–1 currently requires investment companies, and their investment advisers and principal underwriters, to adopt codes of ethics designed to prevent fraud resulting from personal trading in securities by portfolio managers and other employees.[93] The amendments we are proposing today would address a broader range of conduct, including disclosure provided in filings with the Commission; compliance with governmental laws, rules and regulations; and ethical conduct generally, including the handling of actual or apparent conflicts of interest. As a result, we believe that the proposals should apply with equal force to investment companies and operating companies. However, to the extent that an investment company, or its investment adviser or principal underwriter, is considering implementing new or changed code of ethics provisions as a result of today's proposals, it may wish to incorporate these provisions, together with its existing code of ethics under Rule 17j–1, into a single comprehensive code of ethics.[94]

The proposed disclosure requirements would generally cover the same entities covered by Rule 17j–1 (investment companies, investment advisers, principal underwriters) because these are the entities with respect to which conflicts of interest and other ethical issues are most likely to arise. Like Rule 17j–1, the proposed amendments would cover the code of ethics of an

[84] *See* Exchange Act Rules 13a–11 and 15d–11 [17 CFR 240.13a–11 and 15d–11].

[85] Referenced in 17 CFR 249.306.

[86] *See* Exchange Act Rule 13a–16 [17 CFR 240.13a–16].

[87] *See* proposed Instructions (a)(1) and (a)(7) to Item 102P3 of Form N–SAR; proposed Item 3(a) and proposed instruction to Item 3(a) of proposed Form N–CSR. In the case of a UIT, the code of ethics disclosure requirements would apply with respect to the UIT's sponsor, depositor, trustee, and principal underwriter. Proposed Item 133(a) of Form N–SAR.

[88] Proposed Item 133(a) and Instruction (a)(1) to Item 102P3 of Form N–SAR; proposed Item 3(a) of Form N–CSR.

[89] Proposed Item 133(b) and (c), proposed Instructions (a)(2) and (a)(3) to Item 102P3 and proposed Instruction (c) to Item 133 of Form N–SAR; proposed Item 3(b) and 3(c) and proposed Instruction 3 to Item 3 of proposed Form N–CSR.

[90] Item 134(b) and proposed Instruction (a)(4) to Item 102P3 of Form N–SAR; proposed Item 6(b) of proposed Form N–CSR.

[91] *See* proposed Item 3 of proposed Form N–CSR (management investment companies, other than SBICs); proposed Instruction (a) to Item 102P3 of Form N–SAR (SBICs); proposed Items 133 and 134(b) of Form N–SAR (UITs).

[92] Proposed Instruction (a)(6) to Item 102P3 and proposed Instruction (b) to Item 133 of Form N–SAR; proposed Instruction 2 to Item 3 of proposed Form N–CSR. *See* Section II.B.2. above, ''Description of the Proposed Code of Ethics Disclosure Requirements.''

[93] 17 CFR 270.17j–1.

[94] Proposed General Instruction D to Form N–CSR would permit a registered management investment company to incorporate its code of ethics by reference from another document, such as the fund's registration statement. See Item 23(p) of Form N–1A; Item 24.2.r of Form N–2; Item 28(b)(17) of Form N–3 (requiring codes of ethics required by Rule 17j–1 to be filed as exhibits to registration statements).

investment company's principal underwriter only if: (i) The principal underwriter is an affiliated person of the investment company or the investment company's investment adviser; or (ii) an officer, director, or general partner of the principal underwriter serves as an officer, director, or general partner of the investment company or of its investment adviser.[95] Unit investment trusts do not have a corporate-type management structure, but rather are created by a sponsor or depositor that accumulates a portfolio of securities and deposits them with a trustee under the terms of a trust indenture. Therefore, a unit investment trust would not be required to disclose whether it has a code of ethics because it has no officers. Rather, for unit investment trusts, we are proposing to require disclosure with respect to codes of ethics of the trust's sponsor, depositor, trustee or principal underwriter.[96] For unit investment trusts, the proposed amendments would cover the code of ethics of a principal underwriter only if: (i) The principal underwriter is an affiliated person of the trust or the trust's sponsor, depositor, or trustee; or (ii) an officer, director, or general partner of the principal underwriter serves as an officer, director, or general partner of the trust's sponsor, depositor, or trustee.[97]

Request for Comment

- Is the proposed definition of a code of ethics appropriate? Are there any modifications that should be made to this definition in the case of investment companies?
- Do the proposed code of ethics disclosure requirements cover the appropriate entities, in addition to the registered investment company itself? Should any entities be removed, or should other entities (*e.g.*, the administrator) be added?
- Do the code of ethics disclosure requirements cover the appropriate individuals at those entities? Should any of these individuals be removed, or should other individuals be added?
- Should we require registered investment companies, like domestic operating companies, to use Form 8–K to disclose amendments to, or waivers of, a code of ethics within two business days? Or is our proposed approach of requiring periodic reporting of this information on Form N–CSR or Form N–SAR appropriate? Should we propose a separate form for prompt reporting of this information? If we require periodic reporting of amendments and waivers on Forms N–CSR and N–SAR, is the proposed alternative option for disclosure of amendments and waivers on the investment company's Internet website within two business days necessary or appropriate?
- For what period of time should we require an investment company to retain information about amendments to, or waivers from, codes of ethics, if it elects to post this information on its website? Should the retention period be not less than six years from the end of the fiscal year in which the amendment or waiver occurred, which would be consistent with the standard retention period for investment company records, or should it be some other period?[98]

C. Management's Internal Controls and Procedures for Financial Reporting

1. Management's Internal Control Report

Section 404 of the Sarbanes-Oxley Act directs the Commission to prescribe rules that would require each annual report that a company, other than a registered investment company,[99] files pursuant to Section 13(a) or 15(d) of the Exchange Act to contain an internal control report: (1) Stating management's responsibilities for establishing and maintaining adequate internal control structure and procedures for financial reporting; and (2) containing an assessment, as of the end of the company's most recent fiscal year, of the effectiveness of the company's internal controls and procedures for financial reporting.[100]

Twice in the past, the Commission has proposed an internal control report requirement. First, in 1979, following enactment of the Foreign Corrupt Practices Act (''FCPA''),[101] we proposed rules that would have required a company to annually disclose certain information about its internal accounting controls.[102] The proposed rules would have required a company's management to state its opinion as to whether the company's systems of internal accounting control provided reasonable assurance that:

- Transactions were executed in accordance with management's general and specific authorization;
- Transactions were recorded as necessary: (a) To permit preparation of financial statements in conformity with generally accepted accounting principles (or other applicable criteria); and (b) to maintain accountability for assets;
- Access to assets was permitted in accordance with management's general or specific authorization; and
- The recorded accountability for assets was compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any differences.

The proposed rules also would have required an independent public accountant to examine and report on management's statement.

Commenters criticized the 1979 proposal for the scope and content of the proposed management statement, and its close correlation to the FCPA requirements. Many commenters viewed the proposal as requiring a report on compliance with the law. Others pointed to the significant voluntary and private-sector initiatives that had been undertaken in this area and urged us not to preempt such efforts by promulgating formal legal requirements. While we did not agree with all of the commenters' concerns, the Commission at that time decided not to proceed with the rulemaking to allow existing voluntary and private-sector initiatives for public reporting on internal accounting control to continue to develop. In 1980, the Commission formally withdrew the proposal.[103]

[95] Proposed Instruction 1 to Item 3 of proposed Form N–CSR; proposed Instruction (a)(5) to Item 102P3 of Form N–SAR. *See also* Investment Company Act Rule 17j–1(c)(3) [17 CFR 270.17j-1(c)(3)].

[96] Proposed Items 133 and 134(b) of Form N–SAR.

[97] Proposed Instruction (a) to Item 133 of Form N–SAR.

[98] *See* Investment Company Act Rule 31a–2 [17 CFR 270.31a–2] (requiring retention by registered investment companies of various types of records for not less than six years).

[99] Section 404 of the Sarbanes-Oxley Act, and any rules of the Commission under section 404, do not apply to any registered investment company. Section 405 of the Sarbanes-Oxley Act. *See* section II.C.4 below ''Registered Investment Companies.''

[100] Section 404 also requires every registered public accounting firm that prepares or issues an audit report for a company to attest to, and report on, the assessment made by the management of a company.

[101] Title I of Pub. L. 95–213 (1977). Partially codified in 15 U.S.C. 78m(b)(2), these provisions require issuers, with securities registered under section 12 of the Exchange Act, to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and to devise and maintain a system of internal accounting control sufficient to provide reasonable assurances that: (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary (a) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (b) to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

[102] Release No. 34–15772 (April 30, 1979) [44 FR 26702].

[103] Release No. 34–16877 (June 6, 1980) [45 FR 40134].

Following the recommendations of the Treadway Commission, the Commission again proposed rules in 1988 that would have required companies to include in their annual reports a report of management's responsibilities with respect to financial reporting, including its responsibilities for the company's internal control system, and an assessment of the effectiveness of that system.[104] Our 1988 proposal differed from the 1979 proposal in several respects. Under the 1988 proposal, management's report would have been signed on behalf of the company's principal executive, financial, and accounting officers, and would have contained:

- A description of management's responsibilities for the preparation of the company's financial statements and other financial information included in a document containing the financial statements;
- A description of management's responsibilities for establishing and maintaining a system of internal control directly related to, and designed to provide reasonable assurance as to the integrity and reliability of, financial reporting;
- An assessment of the effectiveness of the company's system of internal control that encompassed material matters; and
- A statement of how management responded to any significant recommendations concerning its system of internal controls made by its internal auditors and its independent accountants.

Our 1988 proposal attempted to avoid a direct correlation with the FCPA by including a materiality threshold and focusing on the company's entire system of internal controls, rather than just its internal accounting controls. We received more than 180 comment letters in response to the 1988 proposal, with a majority of commenters supporting it. Many commenters, however, expressed concern over being required to disclose management's response to significant auditor recommendations on the management report. Furthermore, several commenters noted that private sector organizations were working to develop standards for reporting on the effectiveness of a company's internal controls.[105] The Commission did not act on the proposals.

In light of the mandates of the Sarbanes-Oxley Act, we again are proposing to require companies to include a report on their internal controls and procedures for financial reporting in their annual reports.

a. Proposed Disclosure

We propose to amend Item 307 of Regulations S–K and S–B, as well as Forms 20–F and 40–F, to require a company's annual report to include an internal control report of management that includes:

- A statement of management's responsibilities for establishing and maintaining adequate internal controls and procedures for financial reporting;
- Conclusions about the effectiveness of the company's internal controls and procedures for financial reporting based on management's evaluation of those controls and procedures in accordance with Exchange Act Rule 13a–15 or 15d–15, as of the end of the company's most recent fiscal year;[106] and
- A statement that the registered public accounting firm that prepared or issued the company's audit report relating to the financial statements included in the company's annual report has attested to, and reported on, management's evaluation of the company's internal controls and procedures for financial reporting.

The proposed amendments do not specify the exact content of the proposed management report, as this likely would result in boilerplate responses of little value. We believe that management should tailor the report to the company's circumstances.

b. Internal Controls and Procedures for Financial Reporting

A key aspect of management's responsibility for the preparation of financial information is its responsibility to establish and maintain an internal control system.[107] On August 29, 2002, we issued a release adopting new Exchange Act Rules 13a–14 and 15d–14 to implement section 302 of the Sarbanes-Oxley Act. In that release we stated that the term ''internal controls''[108] as used in section 302 of the Sarbanes-Oxley Act is a pre-existing concept that pertains to a company's financial reporting and control of its assets.[109] However, because there are a variety of different definitions of the term ''internal controls'' and its meaning has changed over time, there continues to be confusion regarding the meaning and scope of the term.

One of the first attempts to define internal controls was reflected in 1958 in the Statement on Auditing Procedure No. 29, in which the Committee on Auditing Procedure of the AICPA subdivided the definition of internal control into the following two components: ''administrative control'' and ''accounting control.''[110] This statement explained that the term ''accounting control'' related directly to the safeguarding of assets and the reliability of financial records. Examples included systems of transaction authorization and approval, physical controls over assets, and the plan of organization for separating duties concerned with record-keeping from duties concerned with operations or asset custody. ''Administrative control'' was defined as mainly concerning operational efficiency or adherence to managerial policies. Examples included statistical analyses, performance reports, training programs, and quality-control procedures.

In 1972, the Statement on Auditing Procedure No. 54 redefined the administrative control and accounting control concepts.[111] SAP No. 54 defined administrative control as the plan of organization, procedures, and records concerned with the decision processes leading to management's authorization of transactions. Accounting control was defined as a plan of organization and the procedures and records that are concerned with the safeguarding of assets and the reliability of financial records and consequently are designed to provide reasonable assurance that:

[104] Release No. 34–25925 (July 19, 1988) [53 FR 28009].

[105] Committee of Sponsoring Organizations of the Treadway Commission, *Internal Control—Integrated Framework,* (August 1992) (the ''COSO Report'').

[106] A proposed instruction to Item 307 of Regulations S–K and S–B, Item 15(a) of Form 20–F and Instruction B.(7) of Form 40–F states that if the conclusions of the company's principal executive and financial officers are reflected in management's conclusions disclosed in the internal control report, the company does not have to include any separate disclosure required by Item 307(a) (or relevant provision in the foreign forms) regarding the conclusions of those officers about the effectiveness of the company's internal controls and procedures for financial reporting in its report for its fourth fiscal quarter. Another proposed instruction to those provisions states that the company is encouraged, but not required, to include the disclosure required by Item 307(b) (or relevant provision in the foreign forms) for the company's fourth fiscal quarter in the annual internal control report, rather than disclose this information separately.

[107] *See* American Institute of Certified Public Accountants (AICPA), Codification of Statements on Auditing Standards (AU) 319.53, ''Internal Control in a Financial Statement Audit.''

[108] In this release we use the term ''internal controls'' and ''internal control structure'' synonymously.

[109] *See* Release No. 33–8124 (August 29, 2002) [67 FR 57276].

[110] *See* Committee on Auditing Procedure, AICPA, Statement on Auditing Procedure No. 29, ''Scope of the Independent Auditor's Review of Internal Control'' (1958).

[111] *See* Committee on Auditing Procedure, AICPA, Statement on Auditing Procedure No. 54. The FCPA codified the accounting control provisions of SAP No. 54, *see* note 58.

• Transactions are executed in accordance with management's general or specific authorization;

• Transactions are recorded as necessary (1) to permit preparation of financial statements in conformity with generally accepted accounting principles; and (2) to maintain accountability for assets;

• Access to assets is permitted only by management's authorization; and

• The recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

In 1992, the Committee of Sponsoring Organizations of the Treadway Commission (''COSO'') undertook an extensive study of internal control. COSO defined internal control as ''a process, effected by an entity's board of directors, management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives' in three categories—effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations. COSO further stated that internal control over each of these objectives consisted of the control environment, risk assessment, control activities, information and communication, and monitoring. In 1995, the AICPA's Auditing Standards Board in Statement on Auditing Standards No. 78 codified this definition of internal controls.[112]

We believe that the purpose of internal controls and procedures for financial reporting is to ensure that companies have processes designed to provide reasonable assurance that:

• The company's transactions are properly authorized;

• The company's assets are safeguarded against unauthorized or improper use; and

• The company's transactions are properly recorded and reported to permit the preparation of the registrant's financial statements in conformity with generally accepted accounting principles. We believe that these objectives are embodied in the definition of the term ''internal controls'' as the term is defined in AICPA's Codification of Statements on Auditing Standards (AU) section 319 and is consistent with section 103 of the Sarbanes-Oxley Act.[113] Accordingly, we propose to refer to AU section 319 to define currently internal controls and procedures for financial reporting, pending action by the Public Company Accounting Oversight Board.[114] The proposed definition would state that the term ''internal controls and procedures for financial reporting'' means controls that pertain to the preparation of financial statements for external purposes that are fairly presented in conformity with generally accepted accounting principles as addressed by the Codification of Statements on Auditing Standards 319 or any superseding definition or other literature that is issued or adopted by the Public Company Accounting Oversight Board.

Request for Comment

• Should we propose a definition of internal controls and procedures for financial reporting? If so, is the proposed definition appropriate?

• Should we define the term using AICPA's Codification of Statements on Auditing Standards Section 319 definition? If not, are there any other definitions we should use?

• Should we propose specific disclosure criteria and standards for the management report? If so, what disclosure criteria and standards should we consider?

2. Attestation to, and Report on, Management's Internal Control Report by the Company's Auditor

Section 404(b) of the Sarbanes-Oxley Act requires every registered public accounting firm that prepares or issues an audit report for an issuer other than a registered investment company[115] to attest to, and report on, management's assessment of the issuer's internal controls and procedures for financial reporting. The attestation and report required by section 404(b) must be made in accordance with standards for attestation engagements ''issued or adopted'' by the Public Company Accounting Oversight Board (the ''PCAOB'').

We are proposing amendments to Regulation S–X to reference the attestation report that will be prepared by registered public accounting firms and to require a company to file the attestation in annual reports on Forms 10–K, 10–KSB, 20–F and 40–F.[116] Section 404(b) of the Sarbanes-Oxley Act does not require filing of the attestation report, but we believe that it is essential in satisfying the purposes of this provision of the Sarbanes-Oxley Act to require a company to file both the internal control report and auditor's attestation report in its annual report.

Request for Comment

• If we adopt the proposed amendments before the PCAOB is operational, should we delay effectiveness of the rules until such time as attestation engagements standards are issued or adopted by the PCAOB?

• Should the company have to file the attestation report as part of the annual report? If so, should the report have to appear in a particular part of the annual report? Where?

3. Quarterly Evaluation of Internal Controls and Procedures for Financial Reporting

On August 29, 2002, we adopted new Exchange Act Rules 13a–14 and 15d–14 to implement section 302 of the Sarbanes-Oxley Act. These rules require the principal executive and financial officers of reporting companies to certify the information in their companies' quarterly and annual reports. Specifically, new Rules 13a–14 and 15d–14 require each of these officers to disclose that:

• He or she has reviewed the report;

• Based on his or her knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by the report;

• Based on his or her knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the

[112] Auditing Standards Board, AICPA, Statement on Auditing Standards No. 78, ''Consideration of Internal Control in a Financial Statement Audit: An Amendment to SAS No. 55'' (1995).

[113] Among other things, section 103 of the Act [Pub. L. 107–204 103] directs the Public Company Accounting Oversight Board to adopt auditing standards that would require all registered public accounting firms to present in each audit report or in a separate report: (1) The scope of the auditor's testing of the internal control structure and procedures of the issuer; (2) the findings of the auditor from such testing; (3) the auditor's evaluation of whether such internal control structure and procedures include maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the issuer, provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the issuer are being made only in accordance with authorizations of management and directors of the issuer; and (4) a description, at a minimum, of material weaknesses in such internal controls, and of any material noncompliance found on the basis of such testing.

[114] We believe that this definition integrates the various concepts of internal control into a unified concept that is widely understood by the accounting profession and issuers.

[115] *See* section 405 of the Sarbanes-Oxley Act, which states that rules under section 404 of the Act shall not apply to registered investment companies.

[116] *See* proposed Items 210.1–02(b) and 210.2–02(d) of Regulation S–X.

financial condition, results of operations and cash flows of the issuer as of, and for, the periods presented in the report;

• He or she and the other certifying officers:

(1) Are responsible for establishing and maintaining ''disclosure controls and procedures'' (a newly-defined term reflecting the concept of controls and procedures related to disclosure embodied in section 302(a)(4) of the Sarbanes-Oxley Act) for the issuer;

(2) Have designed such disclosure controls and procedures to ensure that material information is made known to them, particularly during the period in which the periodic report is being prepared;

(3) Have evaluated the effectiveness of the issuer's disclosure controls and procedures as of a date within 90 days prior to the filing date of the report; and

(4) Have presented in the report their conclusions about the effectiveness of the disclosure controls and procedures based on the required evaluation as of that date;

• He or she and the other certifying officers have disclosed to the issuer's auditors and to the audit committee of the board of directors (or persons fulfilling the equivalent function):

(1) All significant deficiencies and material weaknesses in the design or operation of internal controls (a pre-existing term relating to internal controls regarding financial reporting) which could adversely affect the issuer's ability to record, process, summarize and report financial data and have identified for the issuer's auditors any material weaknesses in internal controls; and

(2) Any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal controls; and

• He or she and the other certifying officers have indicated in the report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

For purposes of the Exchange Act Rules 13a–14 and 15d–14, ''disclosure controls and procedures'' are defined as controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in the reports filed or submitted by it under the Exchange Act [117] is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms.[118] ''Disclosure controls and procedures'' include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in its Exchange Act reports is accumulated and communicated to the issuer's management, including its principal executive and financial officers, as appropriate to allow timely decisions regarding required disclosure.

We also adopted new Item 307 of Regulations S–K and S–B [119] to require disclosure in the company's annual and quarterly reports about the principal officers' evaluation of the company's disclosure controls and procedures and whether or not there have been significant changes to the company's internal controls—disclosure that the principal officers must certify that they have made.

Regarding internal controls and procedures for financial reporting, our recently adopted rules require the company's principal executive and financial officers to disclose ''any significant changes in the company's internal controls or in other factors that could significantly affect these controls subsequent to the date of their evaluation, including any corrective actions with respect to significant deficiencies and material weaknesses.'' Despite the reference to an evaluation in this disclosure requirement, our rules currently do not require the company's principal executive and financial officers, or the company itself, to conduct periodic evaluations of the company's internal controls. New Exchange Act Rules 13a–15 and 15d–15 do, however, require a company to conduct a quarterly evaluation of the company's disclosure controls and procedures.

As explained above, section 404 of the Sarbanes-Oxley Act directs us to propose and adopt rules that would require management to annually assess the company's internal control structure and procedures for financial reporting. Section 404 contemplates only an annual evaluation of the company's internal controls. A company's officers already must certify to significant changes to internal controls as required by section 302 of the Sarbanes-Oxley Act.

To provide a basis for this quarterly disclosure about changes to the company's internal controls and procedures for financial reporting, and to create symmetry between our requirements for periodic evaluations of both the company's disclosure controls and procedures and its internal controls and procedures for financial reporting, we propose to require the company's management to evaluate the effectiveness of the design and operation of the company's internal controls and procedures for financial reporting, as well as its disclosure controls and procedures, with respect to each annual and quarterly report that it is required to file under the Exchange Act.[120] In addition, we propose to modify the requirement in Exchange Act Rules 13a–15 and 15d–15 that the evaluation be conducted within the 90-day period prior to the filing date of the quarterly or annual report, to require that the evaluation be made as of the end of the period covered by the report.[121] We are also proposing conforming changes [122] to Exchange Act Rules 13a–14, 13a–15, 15d–14 and 15d–15 and the form of certification in Forms

[117] These reports include quarterly reports on Form 10–Q or 10–QSB, annual reports on Form 10–K, 10–KSB, 20–F or 40–F, current reports, definitive proxy materials filed under section 14(a) of the Exchange Act [15 U.S.C. 78n(a)], definitive information statements filed under section 14(c) of the Exchange Act [15 U.S.C. 78n(c)] and amendments to any of these reports or documents.

[118] *See* Exchange Act Rules 13a–14(c) and 15d–14(c).

[119] In addition, we adopted corresponding amendments to Forms 20–F and 40–F for private foreign issuers. *See* 17 CFR 249.220f and 17 CFR 249.240f.

[120] Rules 13a–15(b) and 15d–15(b). As originally adopted, Rules 13a–15 and 15d–15 required the company to carry out this evaluation under the supervision of, and with the participation of the company's management, including the company's principal executive and financial officers. To better reconcile this requirement with the proposed rules under section 404 of the Sarbanes-Oxley Act, we propose to revise these rules to state more directly that company's management, rather than the company itself, must undertake the required evaluations with the participation of the principal executive and financial officers.

[121] Rules 13a–15(b) and 15d–15(b).

[122] We have also made several clarifying amendments. In particular, the current certification would require management to disclose significant deficiencies to the auditors and audit committee, and identify material weaknesses to the auditors. The accounting literature states that a ''reportable condition'' is one that represents significant deficiencies in the design or operation of internal control. AICPA Codification of Statements on Auditing Standards, section 325. A material weakness is a reportable condition of a magnitude discussed in the literature. *Id.* Therefore, material weaknesses are a subset of significant deficiencies. To clarify, and amplify, that significant weaknesses, including material weaknesses must be disclosed to the auditor and audit committee, we have proposed clarifying language. We have also added language to clarify that the certifying officers need not personally design the company's controls and procedures, and may have such controls and procedures designed under their supervision. In so doing, we recognize that the certifying officers may not have appropriate expertise to do so, and in such case should obtain assistance from third parties. We have also clarified that the reports conclusions must be based on the certifying officers' evaluation as of the end of the period covered by the report.

10–Q, 10–QSB, 10–K, 10–KSB, 20–F and 40–F.

Request for Comment

• Should we propose changes to Exchange Act Rules 13a–14, 13a–15, 15d–14 and 15d–15 to require periodic evaluations of both the company's disclosure controls and procedures and its internal controls and procedures for financial reporting?

4. Federal Deposit Insurance Act Internal Control Reports

In 1993, the Federal Deposit Insurance Corporation (FDIC) adopted rules implementing section 36 of the Federal Deposit Insurance Act [123] that requires, among other things, an insured depository institution with total assets of $500 million or more to prepare an annual management report that contains:

• A statement of management's responsibilities for preparing the institution's annual financial statements, for establishing and maintaining an adequate internal control structure and procedures for financial reporting, and for complying with designated laws and regulations relating to safety and soundness;[124] and

• Management's assessment of the effectiveness of the institution's internal control structure and procedures for financial reporting as of the end of the fiscal year and the institution's compliance with the designated laws and regulations during the fiscal year.[125]

The FDIC's rules additionally require the institution's independent public accountant to examine, and attest to, management's assertions concerning the effectiveness of the institution's internal controls over financial reporting.[126]

Furthermore, the FDIC's rules permit an insured depository institution that is the subsidiary of a holding company to satisfy its internal control report requirement with an internal control report of the consolidated holding company's management if:

• Services and functions comparable to those required of the subsidiary by section 36 of the Federal Deposit Insurance Act are provided at the holding company level; and

• The subsidiary has, as of the beginning of its fiscal year, total assets of less than $5 billion, or total assets of $5 billion or more and a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System.[127]

Bank and thrift holding companies that are required to file reports under section 13(a) or 15(d) of the Exchange Act would be subject to the internal control reporting requirements that we are proposing today. Although our proposed amendments are similar to the FDIC's internal control report requirements, our proposed rules differ in a few respects.[128]

We are coordinating with the FDIC and other federal banking regulators to eliminate, to the extent possible, any unnecessary duplication between our proposed internal control report and the FDIC's internal control report requirements. We expect to provide further guidance on this subject in our release adopting final rules under section 404 of the Sarbanes-Oxley Act.

5. Registered Investment Companies

Section 404 of the Sarbanes-Oxley Act does not apply to registered investment companies, and we are not proposing to extend any of the requirements that would implement section 404 to registered investment companies.[129] We are, however, proposing to make the following technical changes to our rules and forms implementing section 302 of the Sarbanes-Oxley Act for registered investment companies in order to conform to the rule changes that we are proposing for operating companies and for other reasons.

• *Exchange Act Rules 13a–15(c) and 15d–15(c), Paragraph (b)(4)(iii) of Investment Company Act Rule 30a–2, and proposed Investment Company Act Rule 30a–3(b).* The proposed amendments would specify that an investment company's management must evaluate the effectiveness of its disclosure controls and procedures, with the participation of the principal executive and financial officers, as of the end of the period covered by each report filed on Form N–SAR or Form N–CSR.

• *Paragraph (d) of Investment Company Act Rule 30a–2.* The proposed amendments would include the same definition of ''internal controls and procedures for financial reporting'' that we are proposing in Exchange Act Rules 13a–14(d) and 15d–14(d).

• *Instruction (a)(i) to Item 77Q3 of Form N–SAR and Item 5(a) of proposed Form N–CSR.* The proposed amendments would require the disclosure about the evaluation of the investment company's disclosure controls and procedures by the investment company's management to be as of the end of the period covered by the report being filed.

• *Paragraph (b)(4)(vi) of Investment Company Act Rule 30a–2, Instruction (a)(ii) of Item 77Q3 of Form N–SAR, and Item 5(b) of proposed Form N–CSR.* The proposed amendments would require disclosure of any significant changes to the registrant's internal controls and procedures for financial reporting made during the period covered by the report.

• *Item 6(a) of proposed Form N–CSR; paragraphs 1, 2, and 3 of the certification in instruction (a)(iii) to Item 77Q3 of Form N–SAR; and paragraphs 1, 2, and 3 of the certification section of proposed Form N–CSR.* The proposed amendments would expressly require the shareholder reports to be filed as an exhibit to proposed Form N–CSR rather than as an Item response,[130] and would also revise the form of certification in Forms N–SAR and N–CSR to make clear that the report being certified includes any exhibits.

• *Paragraph (b)(4) of Investment Company Act Rule 30a–2, paragraph 4 of the certification in Instruction (a)(iii) to item 77Q3 of Form N–SAR, and paragraph 4 of the certification section of proposed Form N–CSR.* The proposed amendments would require the signing officers to state that they are responsible for establishing and maintaining internal controls and procedures for financial reporting, and that they have disclosed to the investment company's auditors and audit committee all significant deficiencies in the design and operation of internal controls and procedures for financial reporting which could adversely affect the investment company's ability to record, process, summarize and report financial information required to be disclosed in the reports that it files or submits under

[123] 12 U.S.C. 1831m.

[124] The designated laws and regulations are federal laws and regulations concerning loans to insiders and federal and state laws and regulations concerning dividend restrictions. *See* 12 CFR part 363, appendix A, guideline 12.

[125] *See* 12 CFR 363.2, adopted in 58 FR 31332.

[126] 12 CFR 363.3.

[127] This rating is more commonly known as the CAMELS rating, which addresses Capital adequacy, Asset quality, Management, Earnings, Liquidity, and Sensitivity to market risk. *See* 12 CFR 363.1(b)(2).

[128] Most notably, proposed Item 307(b) and (c) of Regulations S–K and S–B would not require a statement of compliance with laws and regulations as is required by FDIC Rule 363.2 [12 CFR 363.2].

[129] *See* section 405 of the Sarbanes-Oxley Act (''Nothing in section 401, 402, or 404, the amendments made by those sections, or the rules of the Commission under those sections shall apply to any investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8).''). The provisions that would not extend to registered investment companies include proposed amendments to Item 307(a) of Regulation S–K, Exchange Act rules 13a–14(b)(4)(iii) and (iv), 13a–15(b), 15a–14(b)(4)(iii) and (iv), and 15d–15(b) (disclosure of effectiveness of internal controls and procedures for financial reporting); proposed Item 307(c) of Regulation S–K (management report on internal controls); and proposed Item 210.2–02(d) of Regulation S–X (attestation to, and report on, management's internal control report).

[130] The proposed amendments would delete Item 1 of proposed Form N–CSR.

both the Securities Exchange Act and the Investment Company Act.

• *Exchange Act Rule 12b–25(a) and (b)(2)(ii) and Form 12b–25.*[131] The proposed amendments would require an investment company to file a Form 12b–25 if it will not be able to file a report on proposed Form N–CSR in a timely manner. Filing of a Form 12b–25 would provide the investment company with an automatic extension of time to file proposed Form N–CSR of up to 15 calendar days following the prescribed due date.

• *General Instruction E of proposed Form N–CSR.* A proposed technical amendment would clarify that terms used in Form N–CSR have meanings as defined in the Investment Company Act of 1940 and the rules and regulations thereunder.

Request for Comment

• Should any rules regarding internal controls and procedures for financial reporting be applied to registered investment companies? If so, which specific rules and procedures should apply?

• When we adopted the certification rules implementing section 302 of the Sarbanes-Oxley Act, we stated that a single evaluation of the effectiveness of the disclosure controls and procedures for a series fund or family of investment companies could be used in multiple certifications for the funds in the series or family, as long as the evaluation had been performed within 90 days of the date of the certified report.[132] What is the effect of today's proposed changes requiring that the evaluation be as of the end of the period covered by the report on the ability to use a single evaluation for a series fund or family of investment companies where the funds have different fiscal years? Should we adopt the approach of today's proposal, retain the approach that we previously adopted, or adopt a different approach?

6. Transition Period for Compliance With Rules Regarding Evaluations of, and Reports and Attestations on, Internal Controls and Procedures for Financial Reporting

The annual internal controls report by management, as well as the related attestation and report on management's evaluation by auditors are proposed new requirements. Although we believe that management and auditors currently review such controls and procedures in conjunction with a company's annual audit, we understand that in many cases such reviews may not be as thorough or as detailed as the proposed rules would require. We expect that companies and their auditors will require substantial time to develop processes under relevant standards and to train appropriate personnel to ensure compliance with these requirements imposed by the Sarbanes-Oxley Act. Similarly, companies and accounting firms likely will need additional time to actually perform these activities.

The Sarbanes-Oxley Act does not impose a deadline for compliance with section 404. Rather, the wording of this section contemplates action by both the PCAOB as well as registered public accounting firms. Specifically, the statute requires that auditor attestations conform with standards for attestation engagements adopted by the PCAOB. We therefore believe that Congress did not intend for the provisions of this section to take effect until the PCAOB has established the relevant attestation standards.[133] Accordingly, we propose to delay the effectiveness of our rules under section 404 to enable the PCAOB to act and other relevant parties to prepare for compliance.

Specifically, we propose that the rules under section 404, if adopted, would apply to companies whose fiscal years end on or after September 15, 2003. This should provide the PCAOB sufficient time to adopt standards for attestation engagements, as well as for companies and auditors to prepare for the expected increase in workload.

We would not require companies to provide such reports or attestations before the proposed date of effectiveness. However, to the extent that a company desires to provide voluntarily an annual report on the effectiveness of its internal controls and procedures for financial reporting, we believe that existing accounting literature should be followed. Similarly, although we do not require attestations by auditors before the proposed rules become effective, we believe that to the extent such attestations are made, accountants would perform such attestations in conformity with existing accounting literature regarding attestation engagements, including section 501 of the AICPA's Statement on Standards for Attestation Engagements.

Similarly, we believe that the effectiveness of changes to certifications by management in a company's annual and quarterly reports also should be delayed until the company has had the opportunity to perform the comprehensive evaluation of internal controls and procedures for financial reporting contemplated by section 404. Therefore, we propose that management need not provide the proposed amended certifications until the first annual report in which the company includes the internal control report required under section 404. Accordingly, until a company is required to provide such report, it need only provide certifications as adopted on August 29, 2002.[134]

Request for Comment

• What transition period do companies and registered public accounting firms need to prepare to perform these undertakings? Is the compliance date we propose adequate? If not, what date should we adopt?

D. Asset-Backed Securities Issuers

In the release adopting the certification requirements,[135] we noted that issuers of asset-backed securities have a reporting obligation under either sections 13(a) or 15(d) of the Exchange Act, at least for a period of time. Because of the nature of asset-backed issuers, the staff of the Division of Corporation Finance has granted requests allowing asset-backed issuers to file modified reports under the Exchange Act.[136] The modified reporting structure for asset-backed issuers allows issuers or depositors to file modified annual reports on Form 10–K and to file reports on Form 8–K tied to payments on the underlying assets in the trust. These reports include a copy of the servicing or distribution report required by the issuer's governing documents and information on the performance of the assets, payments on the asset-backed securities and any other material developments that affect the issuer. Because the information included in these reports for asset-backed issuers differs significantly from that provided by other issuers, as well as the structure of asset-backed issuers we are proposing to exclude them from the disclosure requirements under proposed Items 307, 309 and 406 of Regulation S–K and S–B.

[131] Referenced in 17 CFR 249.322.

[132] *See* Release No. 33–8124 (Aug. 28, 2002) [67 FR 57276, 57282 n. 86].

[133] Such standards would be subject to approval by the Commission.

[134] *See* Release No. 33–8124 (August 29, 2002) [67 FR 57276].

[135] *Id.*

[136] *See,* for example, Release No. 34–16520 (January 23, 1980) (order granting application pursuant to section 12(h) of the Exchange Act [15 U.S.C. 78*l*(h)] of Home Savings and Loan Association); Release No. 34–14446 (February 6, 1978) (order granting application pursuant to section 12(h) of Bank of America National Trust and Savings Association); *Bay View Securitization Corporation* (January 15, 1998); and *Key Bank USA, National Association* (May 9, 1997).

E. General Request for Comment

We request and encourage any interested person to submit comments regarding:

(1) The proposed changes that are the subject of this release,

(2) Additional or different changes, or

(3) Other matters that may have an effect on the proposals contained in this release.

We request comment from the point of view of registrants, investors and other users of information about the proposals. With regard to any comments, we note that such comments are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

III. Paperwork Reduction Act

Form 10–K, Form 10–KSB, Form 20–F, Form 40–F, Form 10–Q, Form 10–QSB, Form 8–K, and Form 12b–25 under the Exchange Act, Regulation S–K, Regulation S–B, and Forms N–SAR and N–CSR under the Exchange Act and the Investment Company Act contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[137] We are submitting a request for approval of the proposed revisions to these requirements to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. 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.

Periodic Reporting Requirements

Form 10–K (OMB Control No. 3235–0063) prescribes information that a registrant must disclose annually to the market about its business. Form 10–KSB (OMB Control No. 3235–0420) prescribes information that a registrant that is a ''small business issuer'' as defined under our rules must disclose annually to the market about its business. Form 20–F (OMB Control No. 3235–0288) prescribes information that a registrant that is a foreign private issuer must disclose annually to the market about its business. Form 40–F (OMB Control No. 3235–0381) prescribes information that a registrant that is eligible to use that form must disclose annually to the market about its business.

Form 10–Q (OMB Control No. 3235–0070) prescribes information that a registrant must disclose quarterly to the market about its business. Form 10–QSB (OMB Control No. 3235–0416) prescribes information that a registrant that is a ''small business issuer'' as defined under our rules must disclose quarterly to the market about its business.

We are proposing to add several disclosure requirements to these forms relating to: (1) Whether a financial expert serves on a company's audit committee; (2) the existence of a company code of ethics for specified officers, and (3) management's assessment of the effectiveness of a company's internal controls and procedures for financial reporting. These proposals would increase the amount of information that a registrant must compile and disclose in these forms. With respect to the first two items, the information in these required disclosures should be readily available to the management of a registrant. Therefore, we expect the burden to compile and report this information to be minimal. The third item requires management to evaluate the effectiveness of the company's internal controls and procedures for financial reporting. We expect that performing these acts will impose a substantially greater burden than the other two disclosure requirements.

Financial Expert. This proposed disclosure requirement would increase the disclosure burden by requiring a registrant to report the number and names of persons that the board of directors has determined to be financial experts on its audit committee as well as whether the expert is independent, and if not, an explanation of why they are not. It would not require a registrant to have a financial expert on its audit committee. Item 401 of Regulations S–K and S–B already requires registrants to ascertain and disclose the business experience of all of its directors. The inquiry that registrants should make to satisfy this disclosure requirement should assist the registrant in determining whether a particular director is a financial expert under the rules. If the registrant does not have a financial expert, the rule only requires that the registrant explain why it does not have such a person on its audit committee. Therefore, we believe the added burden of the proposed rule would be minimal. For purposes of the PRA, we estimate that the proposed disclosure requirements regarding financial experts will result in a minimal incremental increase of 0.5 burden hours per issuer in connection with preparing each annual report.

Code of Ethics. The proposed rule would require a registrant to disclose whether it has adopted a written code of ethics for its principal executive officer, principal financial officer, principal accounting officer or controller, or persons serving similar functions. If it has not, it must explain why. The proposed rule would not require any company to adopt such a code of ethics. Management should be readily able to determine whether or not its company has adopted a code of ethics. In certain cases, the required disclosure would require minimal analysis regarding why the company does not have a code. In addition, in the first year, registrants must file a copy of the code with the Commission. In the case of large manuals that must be filed, we expect a small added cost to file such a document on EDGAR. In addition, we estimate that the disclosure requirements regarding codes of ethics will also cause a minimal increase of 0.5 burden hours per issuer in connection with each annual report.

Management Assessment of Internal Controls and Procedures for Financial Reporting. The proposed rules would require management to assess its internal controls and procedures for financial reporting every quarter. In addition, registrants must provide an internal control report in its annual report as well as obtain an attestation on that evaluation from the independent accountant that audited its financial statements. The performance of, and report on, the assessment will impose costs on registrants. This requirement would not apply to registered investment companies.

Although we expect such evaluation to impose a burden on companies, they are already required to evaluate on a quarterly basis the company's disclosure controls and procedures. We believe that a significant portion of internal controls and procedures for financial reporting are included in disclosure controls and procedures. We already received OMB approval for the added burden of evaluating disclosure controls and procedures. Therefore, for purposes of this release, we need only consider the added incremental burden imposed on companies by the evaluation of that portion of internal controls and procedures for financial reporting that is not subsumed by the disclosure controls and procedures evaluation. In that submission, we estimated that the evaluation of disclosure controls and procedures would add a burden on each issuer of 5 hours per quarterly and annual report. We estimate that the proposed rules would impose and additional 5 burden hours per issuer in connection with each quarterly and annual report. We do not have any data to support this estimate. However,

[137] 44 U.S.C. 3501 *et seq.*

because much of the burden is subsumed in the previous estimate, we believe an estimate of 5 burden hours per quarter is conservative. In addition, in conjunction with annual reports, a company must provide an internal control report. Although the burden of the evaluation has already been considered, the company must compile its conclusions into a publicly disclosed report. We expect that preparation of this report would add an additional 5 hours in conjunction with the annual report.

For PRA purposes, we do not need to consider the added burden to the company of obtaining an attestation on that internal control report by the company's auditor. The Sarbanes-Oxley Act currently requires companies to obtain such an attestation. Our proposed rules do not establish standards for the contents or format of such attestation. In addition, the proposed rules requiring attestation would not be effective until the PCAOB has had the opportunity to establish such standards. The proposed rules would establish no requirements beyond those required by the Sarbanes-Oxley Act except the requirement that the attestation be filed. We do consider the incremental increase in burden caused by this proposed requirement. We estimate that the costs of filing such an attestation report would be minimal. Similar to our estimates regarding disclosure of readily known information, such as the existence of a code of ethics, we estimate that such filing would create an added burden of 0.5 hours.

The burden hours for complying with these proposed requirements are set forth below in the following table. Estimates regarding burden within the company, for third party services, and for professional costs were obtained by contacting a number of law firms and other persons regularly involved in completing the forms.

	Annual responses	Total hours/form	Total burden [1]	75% company [2]	25% professional	$300 professional cost
10–K	9,384	11.5	107,916	80,937	26,979	8,093,700
10–KSB	3,789	11.5	43,574	32,680.5	10,893.5	3,268,050
20–F	1,096	11.5	12,604	3,151	9,453	2,835,900
40–F	127	11.5	1,461	365.25	1,095.75	328,725
10–Q	26,746	5	133,730	100,297.5	33,432.5	10,029,750
10–QSB	11,608	5	58,040	43,530	14,510	4,353,000

[1] Annual Responses × Total Hours per Form.

[2] The staff estimated the average number of hours each entity spends completing the form, and the average hourly rate for outside securities counsel, by contacting a number of law firms and other persons regularly involved in completing the forms. For Forms 20–F and 40–F, we estimate that 25% of the burden is imposed on the company and 75% of the burden is attributed to costs of third parties.

Our current OMB inventories and requested burden estimates are presented in the following table.

	Current hour burden	Expected hour increase	Total expected burden	Current cost burden	Expected cost increase	Total expected cost
10–K	12,337,614	80,937	12,418,551	1,233,761	8,093,700	1,241,854,700
10–KSB	3,435,676	32,680.5	3,468,356.5	343,568,000	3,268,050	346,836,050
20–F	583,248	3,151	586,399	524,496,000	2,835,900	527,331,900
40–F	175	365.25	440.25	440.5138,500	328,725	467,225
10–Q	3,109,223	100,297.5	3,209,520.5	310,922,000	10,029,750	320,951,750
10–QSB	1,279,782	43,530	1,323.312	127,978,000	4,353,000	132,331,000

Form 8–K

Form 8–K (OMB Control No. 3235–0060) prescribes information about significant events that a registrant must disclose on a current basis. Form 8–K also may be used, at a registrant's option, to report any events that the registrant deems to be of importance to shareholders. Companies also may use the form to disclose the nonpublic information required to be disclosed by Regulation FD.[138] We are proposing to require disclosure in the Form 8–K of any change in, or waiver of any provision of, a company code of ethics for senior executive officers. Alternatively, companies may disclose the required information on their websites.

We currently estimate that Form 8–K results in a total annual compliance burden of 627,300 hours and an annual cost of $81,377,000. We estimate the number of Form 8–K filers to be 13,200, based on the actual number of Form 10–K and 10–KSB filers during the 2001 fiscal year. For purposes of this analysis, we estimate that the number of reports on Form 8–K filed is 276,800.[139] We estimate that each entity spends, on average, approximately 5 hours completing the form. We note that a company need not file a Form 8–K to report these events if it discloses the information on its Internet website. If a company elects to disclose such information only on its website, the proposed rules would require the company to keep such information on its website for 12 months and to keep such disclosure for five years. We estimate that the cost of disclosing and maintaining the information on a company's website would be no more than the cost to file a Form 8–K. Therefore, for a particular reporting event, whether disclosed on Form 8–K or through a company's website, we estimate the burden would be 5 hours. We estimate that 75% of the burden is prepared by the company and that 25% of the burden is prepared by outside counsel retained by the company at an average cost of $300 per hour. The staff estimated the average number of hours each entity spends completing the form, and the average hourly rate for outside securities counsel, by contacting a number of law firms and other persons regularly involved in completing the forms.

Under the proposals, we estimate that, on average, completing and filing a Form 8–K if the proposed new disclosure items are adopted would require the same amount of time currently spent by entities completing the form—approximately 5 hours. We believe that changes to a company's code of ethics and waivers from a code

[138] 17 CFR 243.100–103.

[139] This number assumes adoption of the proposals in Release No. 33–8090 (April 12, 2002) [67 FR 19914] If adopted, those proposals would cause companies to file estimated additional 215,500 Form 8–K reports each year.

will be relatively rare events. Therefore, we expect that on average, a company will file a Form 8–K to report such an event once every three years, resulting in a total increase of 4,400 filings on Form 8–K per year. The additional filings would result in an added annual burden of 16,500 hours (4,400 × 5 × .75 = 16,500) and a total annual burden of 643,800 (627,300 + 16,500). We estimate that, if the proposals are adopted, the additional filings would result in an added annual cost of $1,650,000 (4,400 × 5 × .25 × $300 = $1,650,000) and a total annual cost to issuers of $83,027,000 ($81,377,000 + $1,650,000 = $83,027,000).

Regulation S–K and Regulation S–B

Regulation S–K (OMB Control No. 3235–0071) includes the requirements that a registrant must provide in filings under both the Securities Act and the Exchange Act. Regulation S–B (OMB Control No. 3235–0417) includes the requirements that a small business issuer must provide in filings under the Securities Act and the Exchange Act.

The proposed changes to these items would create new items under Regulation S–K and Regulation S–B. However, the filing requirements themselves are included in Form 10–K, Form 10–KSB, Form 10–Q, Form 10–QSB, Form 20–F, Form 40–F, and Form 8–K. We have reflected the burden for these new requirements in the burden estimate for those forms. These items in Regulation S–K and Regulation S–B do not impose any separate burden. We assign one burden hour each to Regulations S–B and S–K for administrative convenience to reflect the fact that these regulations do not impose any direct burden on companies.

Investment Company Forms

Form N–SAR (OMB Control No. 3235–0330) under the Exchange Act and the Investment Company Act is used by registered investment companies to file periodic reports with the Commission. We estimate that 4500 investment companies, including 798 unit investment trusts and 2 small business investment companies, currently file reports on Form N–SAR. The current estimated total compliance burden of Form N–SAR is 154,450 hours. Unit investment trusts would be required to make the proposed disclosure regarding codes of ethics on Form N–SAR, and small business investment companies would be required to make the proposed disclosure regarding codes of ethics and financial experts on Form N–SAR. We estimate that the proposed disclosure requirements will increase the annual burden of filing Form N–SAR by 0.5 hours per unit investment trust, and by 1.0 hour per small business investment company. Therefore, the new estimated total compliance burden of filing Form N–SAR would be 154,851 hours.

We issued a release proposing Form N–CSR on August 30, 2002, pursuant to section 8(a) of the Investment Company Act [15 U.S.C. 80a–8] and section 13 of the Securities Exchange Act [15 U.S.C. 78m]. Proposed Form N–CSR would be used by registered management investment companies to file certified shareholder reports with the Commission. We estimate that 3700 registered management investment companies would be required to file reports on Form N–CSR, and the total compliance burden for Form N–CSR would be 111,000 hours, excluding the amendments proposed in this release. We estimate that the proposed disclosure requirements would increase the annual burden of filing Form N–CSR by 1.0 hours per management investment company. Therefore, the new estimated total compliance burden of filing Form N–CSR would be 114,700 hours.

Form 12b–25 (OMB Control No. 3235–0058) was adopted pursuant to sections 13, 15, and 23 of the Exchange Act. Form 12b–25 provides notice to the Commission and the marketplace that a public company will be unable to file a required report in a timely manner. If certain conditions are met, the company will be granted an automatic filing extension. The proposed amendments would permit investment companies to use Form 12b–25 for the purpose of obtaining extensions with respect to filing Form N–CSR. We estimate that Form 12b–25 results in a total annual compliance burden currently of 31,750 hours, and that each entity using Form 12b–25 spends, on average, approximately 2.5 hours completing the form. Currently, 168 investment companies use Form 12b–25 to obtain extensions of time for filing Form N–SAR. We estimate that the same number of investment companies annually would use Form 12b–25 to obtain extensions of filing Form N–CSR, resulting in a new total compliance burden of 32,170 hours.

Compliance with the revised disclosure requirements would be mandatory. Responses to the disclosure requirements would not be kept confidential.

Pursuant to 44 U.S.C. 3506(c)(2)(B), we solicit comments 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 our estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. In addition, we solicit any comments on this analysis.

Persons submitting comments on the collection of information requirements should direct the comments 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 send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–40–02. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–40–02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its full effect if OMB receives it within 30 days of publication.

IV. Costs and Benefits

The Sarbanes-Oxley Act requires us to propose most of the requirements discussed in this release. These changes will affect all companies reporting under section 13(a) and 15(d) of the Exchange Act, including foreign private issuers and small business issuers, and certain of the proposed changes will affect registered investment companies. We recognize that any implementation of the Sarbanes-Oxley Act will likely result in costs as well as benefits and have an effect on the economy. We are sensitive to the costs and benefits of the proposed rules, if adopted. We discuss these costs and benefits below.

A. Benefits

One of the main goals of the Sarbanes-Oxley Act is to improve investor confidence in the financial markets. These proposals are among many required by the Sarbanes-Oxley Act. They seek to achieve the Sarbanes-Oxley Act's goals by providing greater

transparency regarding issues such as the competency of audit committee members, compliance of senior financial officers with ethics codes of conduct, and the adequacy of a company's internal controls and procedures for financial reporting. By increasing transparency regarding key aspects of corporate activities and conduct, the proposals are designed to improve the quality of information available to investors. Greater transparency should assist the market in properly valuing securities, which leads to more efficient allocation of capital resources.

In addition to the requirements under the Sarbanes-Oxley Act, we are proposing additional requirements. First, the proposal regarding disclosure of whether a company has a financial expert on its audit committee would require disclosure of the names and number of the financial experts on an audit committee and whether those persons are independent of management. We think that investors would benefit from this disclosure by being able to consider it when reviewing the disclosure currently required about all directors' past business experience. The proposal to require companies to file copies of their codes of ethics would allow investors to better understand the ethical principles that guide executives of companies in which they invest. With respect to registered investment companies, these code of ethics disclosure requirements would apply to a registrant's investment adviser and principal underwriter also, and, in the case of a unit investment trust, would apply to the trust's sponsor, depositor and trustee. The proposals also would require companies, other than investment companies, to make quarterly evaluations of their internal controls and procedures for financial reporting. In addition to the above stated benefits of greater transparency, to the extent companies currently do not perform such evaluations, we believe that the proposed requirements would increase the effectiveness of such controls, which would increase the overall quality of financial disclosures in publicly filed reports, as well as companies' internal operations.

B. Costs

The proposals would require companies to disclose additional information about financial experts on a company's audit committee and the existence of a code of conduct for financial executives. This information is readily available to management and the board of directors of a company. Therefore, we expect that the cost of compiling and reporting this information should be minimal. The proposals would also require management to assess its system of controls and the independent public accountant to attest to, and report on, that assessment.

As stated above, in limited instances, we propose to require more disclosure than mandated by the Sarbanes-Oxley Act. For example, if adopted, we expect that companies will incur added costs to disclose the names of financial experts, file codes of ethics in the first year of the rules' effectiveness, and disclose in their periodic reports that they intend to disclose changes in, and waivers from, their codes of ethics via their websites in lieu of publicly filing such disclosure on Form 8–K, or in the case of registered investment companies, Form NSAR or Form N–CSR.

With respect to the additional disclosures related to financial experts, we believe the added burden would be minimal. We do not expect that the disclosure of the names of the financial experts itself would increase the legal obligations or potential liability of such individuals. In addition, for companies other than investment companies, the proposed rules would require a quarterly evaluation of a company's internal controls and procedures for financial reporting. We believe the costs of such evaluations would be mitigated by the fact that companies are already required to perform such evaluations of their disclosure controls and procedures. In several aspects, these disclosure controls and procedures would overlap with internal controls and procedures. To the extent that companies would already be evaluating particular controls and procedures, there would be no added cost.

We also note that we are proposing to require registered investment companies to provide disclosure of any codes of ethics of certain of their principal service providers. This additional disclosure may impose certain costs. We note, however, that investment companies, pursuant to Investment Company Act Rule 17j–1, must already provide disclosure regarding the codes of ethics of their investment advisers and principal underwriters that are required under the rule with respect to the personal trading of their employees. We estimate the additional costs to investment companies in complying with these provisions would be limited. Furthermore, although investment companies are not subject to section 404 of the Sarbanes-Oxley Act, we are proposing certain technical amendments to our rules and forms implementing section 302 of the Sarbanes-Oxley Act. We estimate that these technical amendments will not result in any additional costs to investment companies.

We believe that these additional requirements are necessary to implement the purposes of the Sarbanes-Oxley Act and pose minimal additional burden on companies. Such costs do not include the costs imposed on companies by the Sarbanes-Oxley Act itself. Rather, they reflect the costs of our proposed requirements beyond the requirements of the Sarbanes-Oxley Act. For purposes of the Paperwork Reduction Act, we have estimated that these required activities and reporting will result in an approximate cost of $65,000,000.

We request comment on issues related to this cost-benefit analysis. In particular, are there additional benefits and costs associated with the proposed rules? We are especially interested in obtaining data regarding the estimated cost of the proposed internal control evaluation and auditor attestation requirements, as we expect that these costs could be significant. Please provide any quantitative data on which you rely in formulating your comments.

V. Effect on Efficiency, Competition and Capital Formation

Section 23(a)(2) [140] of the Exchange Act requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The proposed amendments are intended to increase transparency regarding the competence of the audit committee, the application of ethics codes of conduct to certain of a company's executive officers, and the adequacy of a company's internal controls and procedures for financial reporting. We anticipate that these proposals would enhance the proper functioning of the capital markets by giving investors greater insight into the inner workings of public companies. This increases the competitiveness of companies participating in the U.S. capital markets. However, because only companies subject to the reporting requirements of sections 13 and 15 of the Exchange Act (and all registered investment companies with respect to the financial expert and code of ethics disclosure requirements) would be required to make the disclosures in this proposal, competitors not subject to

[140] 15 U.S.C. 78w(a)(2).

those reporting requirements potentially could gain an informational advantage.

We request comment on whether the proposed amendments, if adopted, would impose a burden on competition. Commenters are requested to provide empirical data and other factual support for their views if possible.

Section 2(b) [141] of the Securities Act and section 3(f) [142] of the Exchange Act require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. The proposed amendments would enhance our reporting requirements. The purpose of the amendments is to increase transparency of the inner workings of public companies. This should improve investors' ability to make informed investment and voting decisions. Informed investor decisions generally promote market efficiency and capital formation. As noted above, however, the proposals could have certain indirect consequences, which could adversely impact their ability to raise capital. The possibility of these effects and their magnitude if they were to occur are difficult to quantify.

We request comment on whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

VI. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed revisions to Exchange Act Form 10–K, Form 10–KSB, Form 10–Q, Form 10–QSB, Form 20–F, Form 40–F, Form 8–K, Form 12b–25, Rule 12b–25, Rule 13a–14, Rule 13a–15, Rule 15d–14 and Rule 15d–15 under the Exchange Act and Regulation S–K and Regulation S–B and Exchange Act and Investment Company Act Form N–SAR and Form N–CSR, Rule 30a–2 and Rule 30a–3 under the Investment Company Act.

A. Reasons for the Proposed Action

We are proposing these disclosure requirements to comply with the mandate of, and fulfill the purposes underlying the provisions of, the Sarbanes-Oxley Act of 2002.

B. Objectives

The proposals are intended to enhance investor confidence in the fairness and integrity of the securities markets by increasing transparency regarding the expertise of the audit committee, the ethics codes of that apply to companies' principal executive officer and senior financial officers, and the adequacy of a company's internal controls and procedures for financial reporting. We believe that these proposals would help investors to understand and assess the inner-workings of public companies.

C. Legal Basis

We are proposing the amendments to Form 10–K, Form 10–KSB, Form 10–Q, Form 10–QSB, Form 20–F, Form 40–F, Form 8–K, Form N–SAR, Form N–CSR, Form 12b–25, Rule 12b–25, Rule 13a–14, Rule 13a–15, Rule 15d–14, Rule 15d–15, Rule 30a–2, Rule 30a–3, Regulation S–K and Regulation S–B under the authority set forth in sections 5, 6, 7, 10, 17 and 19 of the Securities Act, sections 12, 13, 15, 23 and 36 of the Exchange Act, sections 8, 30, 31 and 38 of the Investment Company Act, and sections 3(a), 404, 406 and 407 of the Sarbanes-Oxley Act of 2002.

D. Small Entities Subject to the Proposed Revisions

The proposed changes would affect issuers that are small entities. Exchange Act Rule 0–10(a) [143] defines an issuer, other than an investment company, to be a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year. As of February 20, 2002, we estimated that there were approximately 2,500 issuers, other than investment companies, that may be considered small entities. We estimate that there are 225 registered investment companies that may be considered small entities. The proposed revisions would apply to any small entity that is subject to Exchange Act reporting requirements.

E. Reporting, Recordkeeping, and Other Compliance Requirements

The proposals would require companies to disclose information regarding whether a financial expert serves on the audit committee, the ethics codes companies have created that apply to certain senior officers, and the adequacy of a company's internal controls and procedures for financial reporting. All small entities that are subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act (and all small entities that are registered investment companies, with respect to the code of ethics and financial expert disclosure requirements) would be subject to these amendments. Because reporting companies already file the forms proposed to be amended, no additional professional skills beyond those currently possessed by these filers would be necessary to prepare the proposed new disclosure. We expect that reporting information in response to these new disclosure items would increase costs incurred by small entities because they would require these entities to compile and report more information. In addition, to the extent that some small entities may have difficulty attracting qualified financial experts onto their boards, such negative disclosure may have an impact on the market price of their securities. We expect that the added cost of the quarterly evaluations of internal controls and procedures for financial reporting would be mitigated by the fact that such entities currently are required to evaluate their disclosure controls and procedures. In large part, we believe there is significant overlap between these two types of controls and procedures. We have calculated for purposes of the Paperwork Reduction Act that each company, including a small entity, would be subject to an added annual reporting burden of up to 26 hours and an estimated annual average cost of up to $2,650 for disclosure assistance from outside counsel as a result of the amendments.

F. Duplicative, Overlapping, or Conflicting Federal Rules

The proposed disclosure would not duplicate, overlap, or conflict with other federal rules. The Federal Deposit Insurance Corporation has in place rules that, among other things, require insured depository institutions with total assets of $500 million or more to prepare an annual internal control report of management containing information similar to information that would be required under the proposed rules. Insured depository institutions would not be subject to the proposed disclosure requirements; however, the FDIC's rules permit an insured depository institution that is the subsidiary of a holding company to satisfy its internal control report requirement with an internal control report of the consolidated holding company. Bank and thrift holding companies that are required to file reports under section 13(a) or 15(d) of the Exchange Act would be subject to the disclosure requirements under the proposed rules. We are coordinating

[141] 15 U.S.C. 77b(b).

[142] 15 U.S.C. 78c(f).

[143] 17 CFR 240.0–10(a).

with the FDIC and other federal banking regulators to eliminate, to the extent possible, any unnecessary duplication between our proposed disclosure and the FDIC's annual internal control report requirements. There are no other requirements that companies file or provide similar information.

G. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entity issuers. In connection with the proposed revisions, we considered the following alternatives: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of the reporting requirements for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the requirements, or any part thereof, for small entities.

We believe that different compliance or reporting requirements or timetables for small entities would interfere with achieving the primary goal of increasing transparency of corporate activities and internal procedures. We do, however, solicit comment on whether small business issuers, which is a broader category of issuers than small entities,[144] should be subject to fewer disclosure requirements than other issuers. Although we generally believe that an exemption for small entities from coverage of the proposed revisions is not appropriate and inconsistent with the policies underlying the Sarbanes-Oxley Act, we solicit comment on the propriety of a complete or partial exemption from the requirements for small business issuers. We also think that the current and proposed disclosure requirements are clear and straightforward. The proposed new financial expert and code of ethics disclosure requirements would require brief disclosure. The proposed annual internal control requirement would require more. Therefore, it does not seem necessary to develop separate requirements for small entities. We have used design rather than performance standards in connection with the proposed revisions because we want this disclosure to appear in a specific type of disclosure filing so that investors will know where to find the information. We also want the information to be filed electronically with us using the EDGAR filing system. We do not believe that performance standards for small entities would be consistent with the purpose of the proposed revisions.

H. Solicitation of Comments

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding: (i) The number of small entity issuers that may be affected by the proposed revisions; (ii) the existence or nature of the potential impact of the proposed revisions on small entity issuers discussed in the analysis; and (iii) how to quantify the impact of the proposed revisions. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed revisions are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

VII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[145] a rule is ''major'' if it has resulted, or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

Commenters should provide empirical data on (a) the annual effect on the economy; (b) any increase in costs or prices for consumers or individual industries; and (c) any effect on competition, investment or innovation. We request your comments on the reasonableness of this estimate.

VIII. Statutory Basis

We are proposing the amendments to Securities Exchange Act Form 10–K, Form 10–KSB, Form 10–Q, Form 10–QSB, Form 20–F, Form 40–F, Form 8–K, Form 12b–25, Securities Exchange Act and Investment Company Act Form N–SAR and Form N–CSR, Securities Exchange Act Rule 12b–25, Rule 13a–14, Rule 13a–15, Rule 15d–14 and Rule 15d–15, Investment Company Act Rule 30a–2 and Rule 30a–3, and Regulations S–B, S–K and S–X pursuant to sections 5, 6, 7, 10, 17 and 19 of the Securities Act, as amended, sections 12, 13, 15, 23 and 36 of the Securities Exchange Act, as amended, sections 8, 30, 31 and 38 of the Investment Company Act, as amended, and sections 3(a), 404, 406 and 407 of the Sarbanes-Oxley Act of 2002.

Text of the Proposed Amendments

List of Subjects

17 CFR Part 210

Accountants, Accounting, Reporting and recordkeeping requirements, Securities.

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small businesses.

17 CFR Parts 229, 240 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out above, we propose to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 is amended by adding the following citations:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 78c, 78j–1, 78*l*, 78m, 78n, 78o(d), 78q, 78u–5, 78w(a), 78*ll*, 78mm, 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37(a), 80b–3, 80b–11 unless otherwise noted.

Section 210.1–02 is also issued under secs. 3(a) and 404, Pub. L. No. 107–204, 116 Stat. 745.

Section 210.2–02 is also issued under secs. 3(a) and 404, Pub. L. No. 107–204, 116 Stat. 745.

2. Amend § 210.1–02 by:

a. Removing the authority citation following § 210.1–02;

[144] Item 10 of Regulation S–B (17 CFR 228.10) defines a small business issuer as a company that has revenues of less than $25 million, is a U.S. or Canadian issuer, is not an investment company, and has a public float of less than $25 million. Also, if it is a majority owned subsidiary, the parent corporation also must be a small business issuer. Rule 0–10 of the Exchange Act (17 CFR 240.10) defines a small entity for purposes of the Regulatory Flexibility Act as a company that, on the last day of its most recent fiscal year, had total assets of $5 million or less.

[145] Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

b. Redesignating paragraphs (a) through (bb) as (b) through (cc); and

c. Adding new paragraph (a) to read as follows:

§ 210.1–02 Definition of terms used in Regulation S–X (17 CFR part 210).

(a) *Accountant's attestation.* The term *accountant's attestation* means a document in which a registered public accounting firm expresses an opinion concerning a registrant's assertion about the effectiveness of its internal controls and procedures for financial reporting in accordance with standards for attestation engagements. The attestation indicates the scope of the accountant's examination and sets forth the accountant's opinion as to whether the registrant's assertion about the effectiveness of its internal controls and procedures for financial reporting is fairly stated, in all material respects, or includes an opinion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed, the registered public accounting firm must explain why it is unable to express such an opinion.

* * * * *

3. Amend § 210.2–02 by:

a. Revising the section heading;

b. Revising the headings of paragraphs (a), (b), (c) and (d); and

c. Adding new paragraph (f).

The additions and revisions read as follows.

§ 210.2–02 Accountants' reports and attestations.

(a) *Technical requirements for accountants' reports.* * * *

(b) *Representations as to the audit included in accountants' reports.* * * *

(c) *Opinions to be expressed in accountants' reports.* * * *

(d) *Exceptions identified in accountants' reports.* * * *

* * * * *

(f) *Accountants' attestations.* Every registered public accounting firm that issues or prepares an accountant's report for a registrant, other than an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), must examine, attest to, and report separately on, the internal control report of management concerning the effectiveness of the registrant's internal controls and procedures for financial reporting. The accountant's attestation shall be dated, signed manually, identify the period covered by the report and clearly state the opinion of the accountant as to whether the registrant's disclosure about the effectiveness of its internal controls and procedures for financial reporting is fairly stated in all material respects, or must include an opinion to the effect that an overall opinion cannot be expressed. If an overall opinion cannot be expressed, explain why.

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

4. The authority citation for Part 228 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37 and 80b–11.

Section 228.307 is also issued under secs. 3(a), 302 and 404, Pub. L. No. 107–204, 116 Stat. 745.

Section 228.309 is also issued under secs. 3(a) and 407, Pub. L. No. 107–204, 116 Stat. 745.

Section 228.406 is also issued under secs. 3(a) and 406, Pub. L. No. 107–204, 116 Stat. 745.

5. Revise § 228.307 to read as follows:

§ 228.307 (Item 307) Controls and procedures.

(a) *Evaluation of disclosure controls and procedures and internal controls and procedures for financial reporting.* Disclose the conclusions of the small business issuer's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, about the effectiveness of the small business issuer's disclosure controls and procedures and internal controls and procedures for financial reporting based on management's evaluation of these controls and procedures in accordance with §§ 240.13a–15 or 240.15d–this chapter as of the end of the period covered by the quarterly or annual report that includes the disclosure required by this paragraph.

(b) *Changes to internal controls and procedures for financial reporting.*

Disclose any significant changes to the small business issuer's internal controls and procedures for financial reporting made during the period covered by the quarterly or annual report that includes the disclosure required by this paragraph, including any actions taken to correct significant deficiencies and material weaknesses in the small business issuer's internal controls and procedures for financial reporting.

(c) *Report on management's responsibilities.* Furnish an internal control report of management that includes:

(1) A statement of management's responsibilities for establishing and maintaining adequate internal controls and procedures for financial reporting for the small business issuer;

(2) Conclusions about the effectiveness of the small business issuer's internal controls and procedures for financial reporting based on management's evaluation of those controls and procedures in accordance with §§ 240.13a–15 or 240.15d–15 of this chapter as of the end of the small business issuer's most recent fiscal year;

(3) A statement that the registered public accounting firm that prepared or issued the small business issuer's audit report relating to the financial statements included in the report containing the disclosure required by this Item has attested to, and reported on, management's evaluation of the small business issuer's internal controls and procedures for financial reporting; and

(4) The attestation report of the registered public accounting firm that audited or reviewed the financial statements included in the annual report containing the disclosure required by this Item.

Instructions to Item 307

1. A small business issuer that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item.

2. For purposes of this Item, the terms ''disclosure controls and procedures'' and ''internal controls and procedures for financial reporting'' shall have the meanings specified in § 240.13a–14 and § 240.15d–14 of this chapter.

3. If the conclusions of the small business issuer's principal executive and financial officers are reflected in the conclusions disclosed pursuant to paragraph (c)(2) of this Item, the small business issuer does not have to include any separate disclosure required by paragraph (a) of this Item regarding the effectiveness of the small business issuer's internal controls and procedures for financial reporting as of the end of the small business issuer's most recent fiscal year.

4. The small business issuer is encouraged, but not required, to include the annual report disclosure required by paragraph (b) of this Item in the internal control report required by paragraph (c) of this Item, rather than disclosing it elsewhere in the annual report.

6. Add § 228.309 to read as follows:

§ 228.309 (Item 309) Audit committee financial experts.

Disclose the number and names of the persons that the small business issuer's board of directors has determined to be

the financial expert or experts serving on the small business issuer's audit committee, as defined in section 3(a)(58) of the Exchange Act (15 U.S.C. 78c(a)(58)). Also disclose whether the financial expert or experts are independent, as that term is used in section 10A(m)(3) of the Exchange Act (15 U.S.C. 78j–1(m)(3)) and if not, an explanation of why they are not. If the small business issuer's board of directors has not determined that a financial expert is serving on its audit committee, the small business issuer must disclose that fact and explain why it does not have such an expert.

Instructions to Item 309

1. For purposes of the determination by the board of directors under this Item 309, the term ''financial expert'' means a person who has, through education and experience as a public accountant or auditor, or a principal financial officer, controller, or principal accounting officer, of a company that, at the time the person held such position, was required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) and 78o(d)), or experience in one or more positions that involve the performance of similar functions (or that results, in the judgment of the board of directors, in the person's having similar expertise and experience), the following attributes:

a. An understanding of generally accepted accounting principles and financial statements;

b. Experience applying such generally accepted accounting principles in connection with the accounting for estimates, accruals, and reserves that are generally comparable to the estimates, accruals and reserves, if any, used in the small business issuer's financial statements;

c. Experience preparing or auditing financial statements that present accounting issues that are generally comparable to those raised by the small business issuer's financial statements;

d. Experience with internal controls and procedures for financial reporting; and

e. An understanding of audit committee functions.

2. If the board of directors has determined that a person is a financial expert because, in the board's judgment, he or she has similar expertise and experience to those enumerated, the small business issuer must disclose the basis for that determination.

3. In evaluating the education and experience of a person, the board of directors should consider the following factors in the aggregate:

a. The level of the person's accounting or financial education, including whether the person has earned an advanced degree in finance or accounting;

b. Whether the person is a certified public accountant, or the equivalent, in good standing, and the length of time that the person actively has practiced as a certified public accountant, or the equivalent;

c. Whether the person is certified or otherwise identified as having accounting or financial experience by a recognized private body that establishes and administers standards in respect of such expertise, whether that person is in good standing with the recognized private body, and the length of time that the person has been actively certified or identified as having this expertise;

d. Whether the person has served as a principal financial officer, controller or principal accounting officer of a company that, at the time the person held such position, was required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act, and if so, for how long;

e. The person's specific duties while serving as a public accountant, auditor, principal financial officer, controller, principal accounting officer or position involving the performance of similar functions;

f. The person's level of familiarity and experience with all applicable laws and regulations regarding the preparation of financial statements that must be included in reports filed under section 13(a) or 15(d) of the Exchange Act;

g. The level and amount of the person's direct experience reviewing, preparing, auditing or analyzing financial statements that must be included in reports filed under section 13(a) or 15(d) of the Exchange Act;

h. The person's past or current membership on one or more audit committees of companies that, at the time the person held such membership, were required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act;

i. The person's level of familiarity and experience with the use and analysis of financial statements of public companies;

j. Whether the person has any other relevant qualifications or experience that would assist him or her in understanding and evaluating the small business issuer's financial statements and other financial information and to make knowledgeable and thorough inquiries whether:

i. The financial statements fairly present the financial condition, results of operations and cash flows of the small business issuer in accordance with generally accepted accounting principles; and

ii. The financial statements and other financial information, taken together, fairly present the financial condition, results of operations and cash flows of the small business issuer; and

k. In the case of a foreign private issuer, the person's level of experience in respect of public companies in the foreign private issuer's home country, generally accepted accounting principles used by the issuer, and the reconciliation of financial statements with U.S. generally accepted accounting principles.

4. Although the board of directors should consider the factors listed in Instruction 3, those factors are not replacements for, and a financial expert must satisfy, all of the attributes listed in Instruction 1 to this Item.

5. In the case of foreign private issuers with two-tier boards of directors, for purposes of this Item 309, the term ''board of directors'' means the supervisory or non-management board.

6. A small business issuer that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item.

7. Add § 228.406 to read as follows:

§ 228.406 (Item 406) Code of ethics.

(a) Disclose whether the small business issuer has adopted a written code of ethics that applies to the small business issuer's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. If the small business issuer has not adopted such a code of ethics, explain why it has not done so.

(b) If the small business issuer plans to elect to disclose any amendments to, or waivers from, its code of ethics on its Internet website, disclose the small business issuer's Internet address and its intention to disclose these events on its website. If the small business issuer elects to disclose this information through its website, it must make such information available for at least a 12-month period. Following the 12-month period, the small business issuer must retain the information for a period of five years. Upon request, the small business issuer must furnish to the Commission or its staff a copy of any or all information retained pursuant to this requirement.

Instructions to Item 406

1. For purposes of this Item 406, the term ''code of ethics'' means a codification of such standards that is

reasonably designed to deter wrongdoing and to promote:

(a) Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(b) Avoidance of conflicts of interest, including disclosure to an appropriate person or persons identified in the code of any material transaction or relationship that reasonably could be expected to give rise to such a conflict;

(c) Full, fair, accurate, timely, and understandable disclosure in reports and documents that a registrant files with, or submits to, the Commission and in other public communications made by the small business issuer;

(d) Compliance with applicable governmental laws, rules and regulations;

(e) The prompt internal reporting to an appropriate person or persons identified in the code of violations of the code; and

(f) Accountability for adherence to the code.

2. A small business issuer that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item.

8. Amend § 228.601 by:

a. Removing the ''No exhibit required'' designation for exhibit (14) and adding ''Code of ethics'' in its place in the Exhibit Table;

b. Removing ''N/A'' corresponding to exhibit (14) under all captions in the Exhibit Table;

c. Adding an ''X'' corresponding to exhibit (14) under the caption ''Exchange Act Forms,'' ''8–K and ''10–KSB'' in the Exhibit Table; and

d. Adding the text of paragraph (b)(14).

The addition reads as follows:

§ 228.601 (Item 601) Exhibits.

* * * * *

(b) *Description of exhibits.* * * *

(14) *Code of ethics.* Any written code of ethics, or amendment to that code of ethics, that applies to the small business issuer's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, subject to disclosure under Item 406 of Regulation S–B (§ 228.406) or Item 5.05 of Form 8–K (§ 249.308 of this chapter).

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

9. The authority citation for Part 229 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 78mm, 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a) and 80b–11, unless otherwise noted.

Section 229.307 is also issued under secs. 3(a), 302 and 404, Pub. L. 107–204, 116 Stat. 745.

Section 229.309 is also issued under secs. 3(a) and 407, Pub. L. 107–204, 116 Stat. 745.

Section 229.406 is also issued under secs. 3(a) and 406, Pub. L. 107–204, 116 Stat. 745.

Section 229.601 is also issued under secs. 3(a) and 406, Pub. L. 107–204, 116 Stat. 745.

10. Revise § 229.307 to read as follows.

§ 229.307 (Item 307) Controls and procedures.

(a) *Evaluation of disclosure controls and procedures and internal controls and procedures for financial reporting.* Disclose the conclusions of the registrant's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, about the effectiveness of the registrant's disclosure controls and procedures and internal controls and procedures for financial reporting based on management's evaluation of these controls and procedures in accordance with §§ 240.13a–15 and 240.15d–15 of this chapter as of the end of the period covered by the quarterly or annual report that includes the disclosure required by this paragraph.

(b) *Changes to internal controls and procedures for financial reporting.* Disclose any significant changes to the registrant's internal controls and procedures for financial reporting made during the period covered by the quarterly or annual report that includes the disclosure required by this paragraph, including any actions taken to correct significant deficiencies and material weaknesses in the registrant's internal controls and procedures for financial reporting.

(c) *Report on management's responsibilities.* Furnish an internal control report of management that includes:

(1) A statement of management's responsibilities for establishing and maintaining adequate internal controls and procedures for financial reporting for the registrant;

(2) Conclusions about the effectiveness of the registrant's internal controls and procedures for financial reporting based on management's evaluation of those controls and procedures in accordance with §§ 240.13a–15 or 240.15d–15 of this chapter as of the end of the registrant's most recent fiscal year;

(3) A statement that the registered public accounting firm that prepared or issued the registrant's audit report relating to the financial statements included in the report containing the disclosure required by this Item has attested to, and reported on, management's evaluation of the registrant's internal controls and procedures for financial reporting; and

(4) The attestation report of the registered public accounting firm that audited or reviewed the financial statements included in the annual report containing the disclosure required by this Item.

Instructions to Item 307

1. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item.

2. For purposes of this Item, the terms ''disclosure controls and procedures'' and ''internal controls and procedures for financial reporting'' shall have the meanings specified in § 240.13a–14 and § 240.15d–14 of this chapter.

3. If the conclusions of the registrant's principal executive and financial officers are reflected in the conclusions disclosed pursuant to paragraph (c)(2) of this Item, the registrant does not have to include any separate disclosure required by paragraph (a) of this Item regarding the effectiveness of the registrant's internal controls and procedures for financial reporting as of the end of the registrant's most recent fiscal year.

4. The registrant is encouraged, but not required, to include the annual report disclosure required by paragraph (b) of this Item in the internal control report required by paragraph (c) of this Item, rather than disclosing it elsewhere in the annual report.

11. Add § 229.309 to read as follows:

§ 229.309 (Item 309) Audit committee financial experts.

Disclose the number and names of the persons that the registrant's board of directors has determined to be the financial experts serving on the registrant's audit committee, as defined in section 3(a)(58) of the Exchange Act (15 U.S.C. 78c(a)(58)). Also disclose

whether the financial expert or experts are independent as that term is used in section 10A(m)(3) of the Exchange Act (15 U.S.C. 78j–1(m)(3)), and if not, an explanation of why they are not. If the registrant's board of directors has not determined that a financial expert is serving on its audit committee, the registrant must disclose that fact and explain why it does not have such an expert.

Instructions to Item 309

1. For purposes of the determination by the board of directors under this Item 309, the term ''financial expert'' means a person who has, through education and experience as a public accountant or auditor, or a principal financial officer, controller, or principal accounting officer, of a company that, at the time the person held such position, was required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) and 78o(d)), or experience in one or more positions that involve the performance of similar functions (or that results, in the judgment of the board of directors, in the person's having similar expertise and experience), the following attributes:

a. An understanding of generally accepted accounting principles and financial statements;

b. Experience applying such generally accepted accounting principles in connection with the accounting for estimates, accruals, and reserves that are generally comparable to the estimates, accruals and reserves, if any, used in the registrant's financial statements;

c. Experience preparing or auditing financial statements that present accounting issues that are generally comparable to those raised by the registrant's financial statements;

d. Experience with internal controls and procedures for financial reporting; and

e. An understanding of audit committee functions.

2. If the board of directors has determined that a person is a financial expert because, in the board's judgment, he or she has similar expertise and experience to those enumerated, the registrant must disclose the basis for that determination.

3. In evaluating the education and experience of a person, the board of directors should consider the following factors in the aggregate:

a. The level of the person's accounting or financial education, including whether the person has earned an advanced degree in finance or accounting;

b. Whether the person is a certified public accountant, or the equivalent, in good standing, and the length of time that the person actively has practiced as a certified public accountant, or the equivalent;

c. Whether the person is certified or otherwise identified as having accounting or financial experience by a recognized private body that establishes and administers standards in respect of such expertise, whether that person is in good standing with the recognized private body, and the length of time that the person has been actively certified or identified as having this expertise;

d. Whether the person has served as a principal financial officer, controller or principal accounting officer of a company that, at the time the person held such position, was required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act, and if so, for how long;

e. The person's specific duties while serving as a public accountant, auditor, principal financial officer, controller, principal accounting officer or position involving the performance of similar functions;

f. The person's level of familiarity and experience with all applicable laws and regulations regarding the preparation of financial statements that must be included in reports filed under section 13(a) or 15(d) of the Exchange Act;

g. The level and amount of the person's direct experience reviewing, preparing, auditing or analyzing financial statements that must be included in reports filed under section 13(a) or 15(d) of the Exchange Act;

h. The person's past or current membership on one or more audit committees of companies that, at the time the person held such membership, were required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act;

i. The person's level of familiarity and experience with the use and analysis of financial statements of public companies;

j. Whether the person has any other relevant qualifications or experience that would assist him or her in understanding and evaluating the registrant's financial statements and other financial information and to make knowledgeable and thorough inquiries whether:

i. The financial statements fairly present the financial condition, results of operations and cash flows of the registrant in accordance with generally accepted accounting principles; and

ii. The financial statements and other financial information, taken together, fairly present the financial condition, results of operations and cash flows of the registrant; and

k. In the case of a foreign private issuer, the person's level of experience in respect of public companies in the foreign private issuer's home country, generally accepted accounting principles used by the issuer, and the reconciliation of financial statements with U.S. generally accepted accounting principles.

4. Although the board of directors should consider the factors listed in Instruction 3, those factors are not replacements for, and a financial expert must satisfy, all of the attributes listed in Instruction 1 to this Item.

5. In the case of foreign private issuers with two-tier boards of directors, for purposes of this Item 309, the term ''board of directors'' means the supervisory or non-management board.

6. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item.

12. Add § 229.406 to read as follows:

§ 229.406 (Item 406) Code of ethics.

(a) Disclose whether the registrant has adopted a written code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. If the registrant has not adopted such a code of ethics, explain why it has not done so.

(b) If the registrant plans to elect to disclose any amendments to, or waivers from, its code of ethics on its Internet website, disclose the registrant's Internet address and its intention to disclose these events on its website. If the registrant elects to disclose this information through its website, it must make such information available for at least a 12-month period. Following the 12-month period, the registrant must retain the information for a period of not less than five years. Upon request, the registrant must furnish to the Commission or its staff a copy of any or all information retained pursuant to this requirement.

Instructions to Item 406

1. For purposes of this Item 406, the term ''code of ethics'' means a codification of such standards that is reasonably designed to deter wrongdoing and to promote:

(a) Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(b) Avoidance of conflicts of interest, including disclosure to an appropriate

person or persons identified in the code of any material transaction or relationship that reasonably could be expected to give rise to such a conflict;

(c) Full, fair, accurate, timely, and understandable disclosure in reports and documents that a registrant files with, or submits to, the Commission and in other public communications made by the registrant;

(d) Compliance with applicable governmental laws, rules and regulations;

(e) The prompt internal reporting to an appropriate person or persons identified in the code of violations of the code; and

(f) Accountability for adherence to the code.

2. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item.

13. Amend § 229.601 by:

a. Removing the ''reserved'' designation for exhibit (14) and adding ''Code of ethics'' in its place in the Exhibit Table;

b. Removing ''N/A'' corresponding to exhibit (14) under all captions in the Exhibit Table;

c. Adding an ''X'' corresponding to exhibit (14) under the caption ''Exchange Act Forms'', ''8–K'' and ''10–K'' in the Exhibit Table; and

d. Adding the text of paragraph (b)(14).

The addition reads as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

(b) *Description of exhibits.* * * *

(14) *Code of ethics.* Any written code of ethics, or amendment to that code of ethics, that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, subject to disclosure under Item 406 of Regulation S–K (§ 229.406) or Item 5.05 of Form 8–K (§ 249.308 of this chapter).

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

14. The authority citation for Part 240 is amended by revising the specific authority for ''Section 240.13a–15'' and ''Section 240.15d–15'' and adding an authority in numerical order to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

Section 240.13a–15 is also issued under secs. 3(a), 302 and 404, Pub. L. 107–204, 116 Stat. 745.

* * * * *

Section 240.14a–101 is also issued under secs. 3(a) and 407, Pub. L. 107–204, 116 Stat. 745.

* * * * *

Section 240.15d–15 is also issued under secs. 3(a), 302 and 404, Pub. L. 107–204, 116 Stat. 745.

* * * * *

15. As proposed in 67 FR 42914, amend § 240.12b–25 by revising the section heading and paragraphs (a) and (b)(2)(ii) to read as follows:

§ 240.12b–25 Notification of inability to timely file all or any required portion of a Form 10–K, 10–KSB, 20–F, 11–K, N–SAR, N–CSR, 10–Q, 10–QSB or 8–K.

(a) If all or any required portion of an annual or transition report on Form 10–K, 10–KSB, 20–F or 11–K (17 CFR 249.310, 249.310b, 249.220f or 249.311), or a quarterly or transition report on Form 10–Q or 10–QSB (17 CFR 249.308a or 249.308b), or a current report on Form 8–K (17 CFR 249.308) required to be filed pursuant to sections 13 or 15(d) of the Act (15 U.S.C. 78m or 78o(d)) and rules thereunder, or if all or any portion of a semi-annual, annual or transition report on Form N–SAR or N–CSR (17 CFR 274.101 or 274.128 of this chapter) required to be filed pursuant to sections 13 or 15(d) of the Act or section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a–29) and the rules thereunder is not filed within the time period prescribed for such report, the registrant, no later than one business day after the due date for such report, shall file a Form 12b–25 (17 CFR 249.322 of this chapter) with the Commission which shall contain disclosure of its inability to file the report timely and the reasons therefor in reasonable detail.

(b) * * *

(1) * * *

(2) * * *

(i) * * *

(ii) The subject annual report, semi-annual report or transition report on Form 10–K, 10–KSB, 20–F, 11–K, N–SAR, or N–CSR, or portion thereof, will be filed no later than the fifteenth calendar day following the prescribed due date; or the subject quarterly report or transition report on Form 10–Q or 10–QSB, or portion thereof, will be filed no later than the fifth calendar day following the prescribed due date; or the subject current report on Form 8–K, or portion thereof, will be filed no later than the second business day following the prescribed due date and, in the case of Form 8–K, specifying the Item number or numbers to be included in the filing; and

16. Amend § 240.13a–14 by:

a. Revising paragraph (b)(4);

b. Redesignating paragraphs (d), (e), (f) and (g) as paragraphs (e), (f), (g) and (h); and

c. Adding new paragraph (d).

The revisions and additions read as follows:

§ 240.13a–14 Certification of disclosure in annual and quarterly reports.

* * * * *

(b) * * *

(4) He or she and the other certifying officers are responsible for establishing and maintaining disclosure controls and procedures and internal controls and procedures for financial reporting (as such terms are defined in paragraphs (c) and (d) of this section) for the issuer and have:

(i) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under their supervision, to ensure that material information relating to the issuer, including its consolidated subsidiaries, is made known to them by others within those entities, particularly during the period in which periodic reports are being prepared;

(ii) Designed such internal controls and procedures for financial reporting, or caused such internal controls and procedures for financial reporting to be designed under their supervision, to provide reasonable assurances that the registrant's financial statements are fairly presented in conformity with generally accepted accounting principles;

(iii) Evaluated the effectiveness of the registrant's disclosure controls and procedures and internal controls and procedures for financial reporting as of the end of the period covered by the report (''Evaluation Date'');

(iv) Presented in the report their conclusions about the effectiveness of the disclosure controls and procedures and internal controls and procedures for financial reporting, in each case based on their evaluation as of the Evaluation Date;

(v) Disclosed to the registrant's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function):

(A) All significant deficiencies and material weaknesses in the design or operation of internal controls and procedures for financial reporting which could adversely affect the registrant's

ability to record, process, summarize and report financial information required to be disclosed by the registrant in the reports that it files or submits under the Act (15 U.S.C. 78a *et seq.*), within the time periods specified in the Commission's rules and forms; and

(B) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls and procedures for financial reporting; and

(vi) Indicated in the report any significant changes in the registrant's internal controls and procedures for financial reporting or in other factors that could significantly affect internal controls and procedures for financial reporting made during the period covered by the report, including any actions taken to correct significant deficiencies and material weaknesses in the registrant's internal controls and procedures for financial reporting.

* * * * *

(d) For purposes of this section and § 240.13a–15, the term *internal controls and procedures for financial reporting* means controls that pertain to the preparation of financial statements for external purposes that are fairly presented in conformity with generally accepted accounting principles as addressed by the Codification of Statements on Auditing Standards § 319 or any superseding definition or other literature that is issued or adopted by the Public Company Accounting Oversight Board.

* * * * *

17. Amend § 240.13a–15 by:

a. Revising the section heading and paragraph (b); and

b. Adding paragraph (c).

The revisions and addition read as follows:

§ 240.13a–15 Controls and procedures.

* * * * *

(b) In connection with each report, including transition reports, filed on Form 10–Q, Form 10–QSB, Form 10–K, Form 10–KSB, Form 20–F or Form 40–F (§§ 249.308a, 249.308b, 249.310, 249.310b, 249.220f or 249.240f of this chapter) under section 13(a) of the Act (15 U.S.C. 78m(a)), other than a report filed by an Asset-Backed Issuer (as defined in § 240.13a–14), the issuer's management must conduct an evaluation, with the participation of the issuer's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, of the effectiveness, as of the end of the period covered by the report, of the design and operation of the issuer's disclosure controls and procedures and the issuer's internal controls and procedures for financial reporting.

(c) In connection with each report, including transition reports, filed on Form N–CSR (§§ 249.331 and 274.128 of this chapter) or Form N–SAR (§§ 249.330 and 274.101 of this chapter) that requires certification under § 270.30a–2 of this chapter, the issuer's management must conduct an evaluation, with the participation of the issuer's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, of the effectiveness, as of the end of the period covered by the report, of the design and operation of the issuer's disclosure controls and procedures.

18. Amend § 240.15d–14 by:

a. Revising paragraph (b)(4);

b. Redesignating paragraphs (d), (e), (f) and (g) as paragraphs (e), (f), (g) and (h); and

c. Adding new paragraph (d).

The revisions and additions read as follows:

§ 240.15d–14 Certification of disclosure in annual and quarterly reports.

* * * * *

(b) * * *

(4) He or she and the other certifying officers are responsible for establishing and maintaining disclosure controls and procedures and internal controls and procedures for financial reporting (as such terms are defined in paragraphs (c) and (d) of this section) for the issuer and have:

(i) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under their supervision, to ensure that material information relating to the issuer, including its consolidated subsidiaries, is made known to them by others within those entities, particularly during the period in which periodic reports are being prepared;

(ii) Designed such internal controls and procedures for financial reporting, or caused such internal controls and procedures for financial reporting to be designed under their supervision, to provide reasonable assurances that the registrant's financial statements are fairly presented in conformity with generally accepted accounting principles;

(iii) Evaluated the effectiveness of the registrant's disclosure controls and procedures and internal controls and procedures for financial reporting as of the end of the period covered by the report (''Evaluation Date'');

(iv) Presented in the report their conclusions about the effectiveness of the disclosure controls and procedures and internal controls and procedures for financial reporting, in each case based on their evaluation as of the Evaluation Date;

(v) Disclosed to the registrant's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function):

(A) All significant deficiencies and material weaknesses in the design or operation of internal controls and procedures for financial reporting which could adversely affect the registrant's ability to record, process, summarize and report financial information required to be disclosed by the registrant in the reports that it files or submits under the Act (15 U.S.C. 78a *et seq.*), within the time periods specified in the Commission's rules and forms; and

(B) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls and procedures for financial reporting; and

(vi) Indicated in the report any significant changes in the registrant's internal controls and procedures for financial reporting or in other factors that could significantly affect internal controls and procedures for financial reporting made during the period covered by the report, including any actions taken to correct significant deficiencies and material weaknesses in the registrant's internal controls and procedures for financial reporting.

* * * * *

(d) For purposes of this section and § 240.15d–15, the term *internal controls and procedures for financial reporting* means controls that pertain to the preparation of financial statements for external purposes that are fairly presented in conformity with generally accepted accounting principles as addressed by the Codification of Statements on Auditing Standards § 319 or any superseding definition or other literature that is issued or adopted by the Public Company Accounting Oversight Board.

* * * * *

19. Amend § 240.15d–15 by:

a. Revising the section heading and paragraph (b); and

b. Adding paragraph (c).

The revisions and addition read as follows:

§ 240.15d–15 Controls and procedures.

* * * * *

(b) In connection with each report, including transition reports, filed on

Form 10–Q, Form 10–QSB, Form 10–K, Form 10–KSB, Form 20–F or Form 40–F (§§ 249.308a, 249.308b, 249.310, 249.310b, 249.220f or 249.240f of this chapter) under section 15(d) of the Act (15 U.S.C. 78o(d)), other than a report filed by an Asset-Backed Issuer (as defined in § 240.15d–14), the issuer's management must conduct an evaluation, with the participation of the issuer's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, of the effectiveness, as of the end of the period covered by the report, of the design and operation of the issuer's disclosure controls and procedures and the issuer's internal controls and procedures for financial reporting.

(c) In connection with each report, including transition reports, filed on Form N–CSR (§§ 249.331 and 274.128 of this chapter) or Form N–SAR (§§ 249.330 and 274.101 of this chapter) that requires certification under § 270.30a–2 of this chapter, the issuer's management must conduct an evaluation, with the participation of the issuer's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, of the effectiveness, as of the end of the period covered by the report, of the design and operation of the issuer's disclosure controls and procedures.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

20. The authority citation for Part 249 is revised to read as follows:

Authority: 15 U.S.C. 78a *et seq.*, unless otherwise noted.

Section 249.220f is also issued under secs. 3(a), 302, 404 and 407, Pub. L. 107–204, 116 Stat. 745.

Section 249.240f is also issued under secs. 3(a), 302, 404 and 407, Pub. L. 107–204, 116 Stat. 745.

Section 249.308 is also issued under 15 U.S.C. 80a–29 and secs. 3(a), 302 and 404, Pub. L. 107–204, 116 Stat. 745.

Section 249.308a is also issued under secs. 3(a), 302 and 404, Pub. L. 107–204, 116 Stat. 745.

Section 249.308b is also issued under secs. 3(a), 302 and 404, Pub. L. 107–204, 116 Stat. 745.

Section 249.310 is also issued under secs. 3(a), 302, 404 and 407, Pub. L. 107–204, 116 Stat. 745.

Section 249.310b is also issued under secs. 3(a), 302, 404 and 407, Pub. L. 107–204, 116 Stat. 745.

Section 249.326(T) is also issued under 15 U.S.C. 78m(f)(1).

Section 249.330 is also issued under secs. 3(a), 302, 406, and 407, Pub. L. 107–204, 116 Stat. 745.

Section 249.331 is also issued under secs. 3(a), 302, 406, and 407, Pub. L. 107–204, 116 Stat. 745.

21. As proposed in 67 FR 42914, amend Form 8–K (referenced in § 249.308) by adding Item 5.05 to read as follows:

Note: The text of Form 8–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 8–K

Current Report

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

* * * * *

Item 5.05. Amendments to the Registrant's Code of Ethics, or Waiver of a Provision of the Code of Ethics

If the registrant has amended its code of ethics that applies to its principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions or granted a waiver, including an implicit waiver, from a provision of the code of ethics to one of these officers or persons, the registrant must briefly describe the nature of the amendment or waiver. Disclosure regarding waivers must include the name of the person to whom the waiver was granted, and the date of the waiver.

Instruction

The registrant does not need to provide any information pursuant to this Item if it discloses the required information on its Internet website within two business days following the date of the amendment or waiver and the registrant has disclosed in its most recently filed annual report its Internet address and intention to provide disclosure in this manner. If the registrant elects to disclose the information required by this Item through its website, such information must remain available on the website for at least a 12-month period. Following the 12-month period, the registrant must retain the information for a period of not less than five years. Upon request, the registrant must furnish to the Commission or its staff a copy of any or all information retained pursuant to this requirement.

* * * * *

22. Amend Form 10–Q (referenced in § 249.308a) by:

a. Revising Item 4 in Part I—Financial Information; and

b. Revising the ''Certifications'' section.

The revisions read as follows:

Note: The text of Form 10–Q does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–Q

* * * * *

Part I—Financial Information

* * * * *

Item 4. Controls and Procedures

Furnish the information required by Item 307(a) and (b) of Regulation S–K (§ 229.307(a) and (b) of this chapter).

* * * * *

Certifications*

I, [identify the certifying individual], certify that:

1. I have reviewed this quarterly report on Form 10–Q of [identify registrant];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures and internal controls and procedures for financial reporting (as defined in Exchange Act Rules 13a–14 and 15d–14) for the registrant and we have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal controls and procedures for financial reporting, or caused such internal controls and procedures for financial reporting to be designed under their supervision, to provide reasonable assurances that the registrant's financial statements are fairly presented in conformity with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and

procedures and internal controls and procedures for financial reporting as of the end of the period covered by this report (''Evaluation Date'');

(d) Presented in this report our conclusions about the effectiveness of the disclosure controls and procedures and internal controls and procedures for financial reporting based on our evaluation as of the Evaluation Date;

(e) Disclosed to the registrant's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function):

(i) All significant deficiencies and material weaknesses in the design or operation of internal controls and procedures for financial reporting which could adversely affect the registrant's ability to record, process, summarize and report financial information required to be disclosed by the registrant in the reports that it files or submits under the Act (15 U.S.C. 78a *et seq.*), within the time periods specified in the U.S. Securities and Exchange Commission's rules and forms; and

(ii) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls and procedures for financial reporting; and

(f) Indicated in this report any significant changes in the registrant's internal controls and procedures for financial reporting or in other factors that could significantly affect internal controls and procedures for financial reporting made during the period covered by this report, including any actions taken to correct significant deficiencies and material weaknesses in the registrant's internal controls and procedures for financial reporting.

Date: _____

_____

[Signature]

_____

[Title]

* Provide a separate certification for each principal executive officer and principal financial officer of the registrant. See Rules 13a–14 and 15d–14. The required certification must be in the exact form set forth above.

23. Amend Form 10–QSB (referenced in § 249.308b) by:

a Revising Item 3 in Part I—Financial Information; and

b. Revising the ''Certifications'' section.

The revisions read as follows:

Note: The text of Form 10–QSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–QSB

* * * * *

Part I—Financial Information

* * * * *

Item 3. Controls and Procedures

Furnish the information required by Item 307(a) and (b) of Regulation S–B (§ 228.307(a) and (b) of this chapter).

* * * * *

Certifications*

I, [identify the certifying individual], certify that:

1. I have reviewed this quarterly report on Form 10–QSB of [identify registrant];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the small business issuer as of, and for, the periods presented in this report;

4. The small business issuer's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures and internal controls and procedures for financial reporting (as defined in Exchange Act Rules 13a–14 and 15d–14) for the small business issuer and we have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal controls and procedures for financial reporting, or caused such internal controls and procedures for financial reporting to be designed under their supervision, to provide reasonable assurances that the small business issuer's financial statements are fairly presented in conformity with generally accepted accounting principles;

(c) Evaluated the effectiveness of the small business issuer's disclosure controls and procedures and internal controls and procedures for financial reporting as of the end of the period covered by this report (''Evaluation Date'');

(d) Presented in this report our conclusions about the effectiveness of the disclosure controls and procedures and internal controls and procedures for financial reporting based on our evaluation as of the Evaluation Date;

(e) Disclosed to the small business issuer's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function):

(i) All significant deficiencies and material weaknesses in the design or operation of internal controls and procedures for financial reporting which could adversely affect the small business issuer's ability to record, process, summarize and report financial information required to be disclosed by the small business issuer in the reports that it files or submits under the Act (15 U.S.C. 78a *et seq.*), within the time periods specified in the U.S. Securities and Exchange Commission's rules and forms; and

(ii) Any fraud, whether or not material, that involves management or other employees who have a significant role in the small business issuer's internal controls and procedures for financial reporting; and

(f) Indicated in this report any significant changes in the small business issuer's internal controls and procedures for financial reporting or in other factors that could significantly affect internal controls and procedures for financial reporting made during the period covered by this report, including any actions taken to correct significant deficiencies and material weaknesses in the small business issuer's internal controls and procedures for financial reporting.

Date: _____

_____

[Signature]

_____

[Title]

* Provide a separate certification for each principal executive officer and principal financial officer of the small business issuer. See Rules 13a–14 and 15d–14. The required certification must be in the exact form set forth above.

24. Amend Form 20–F (referenced in § 249.220f) by:

a. Adding Item 15;

b. Redesignating paragraph 10 of ''Instructions as to Exhibits'' as paragraph 11;

c. Adding new paragraph 10 to ''Instructions as to Exhibits''; and

d. Revising the ''Certifications'' section.

The additions and revisions read as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20–F

* * * * *

Item 15 Certain Disclosures

(a) Controls and Procedures

(1) *Evaluation of Disclosure Controls and Procedures and Internal Controls and Procedures for Financial Reporting.* Disclose the conclusions of the registrant's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, about the effectiveness of the registrant's disclosure controls and procedures and internal controls and procedures for financial reporting based on management's evaluation of these controls and procedures in accordance with §§ 240.13a–15 or 240.15d–15 of this chapter as of the end of the period covered by the annual report that includes the disclosure required by this paragraph.

(2) *Changes to Internal Controls and Procedures for Financial Reporting.* Disclose any significant changes to the registrant's internal controls and procedures for financial reporting made during the period covered by the annual report that includes the disclosure required by this paragraph, including any actions taken to correct significant deficiencies and material weaknesses in the registrant's internal controls and procedures for financial reporting.

(3) *Report on management's responsibilities.* Furnish an internal control report of management that includes:

(i) A statement of management's responsibilities for establishing and maintaining adequate internal controls and procedures for financial reporting for the registrant;

(ii) Conclusions about the effectiveness of the registrant's internal controls and procedures for financial reporting based on management's evaluation of those controls and procedures in accordance with §§ 240.13a–15 or 240.15d–15 of this chapter as of the end of the registrant's most recent fiscal year;

(iii) A statement that the registered public accounting firm that prepared or issued the registrant's audit report relating to the financial statements included in the report containing the disclosure required by this Item has attested to, and reported on, management's evaluation of the registrant's internal controls and procedures for financial reporting; and

(iv) The attestation report of the registered public accounting firm that audited or reviewed the financial statements included in the annual report containing the disclosure required by this Item 15(a)(3).

Instructions to Item 15(a)

1. You do not need to provide the information called for by this Item 15(a) unless you are using this form as an annual report.

2. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g)) is not required to disclose the information required by this Item 15(a).

3. For purposes of this Item, the terms ''disclosure controls and procedures'' and ''internal controls and procedures for financial reporting'' shall have the meanings specified in § 240.13a–14 and § 240.15d–14 of this chapter.

4. If the conclusions of the registrant's principal executive and financial officers are reflected in the conclusions disclosed pursuant to paragraph (c)(2) of this Item, the registrant does not have to include any separate disclosure required by paragraph (a) of this Item regarding the effectiveness of the registrant's internal controls and procedures for financial reporting as of the end of the registrant's most recent fiscal year.

5. The registrant is encouraged, but not required, to include the annual report disclosure required by paragraph (a)(2) of this Item in the internal control report required by paragraph (a)(3) of this Item, rather than disclosing it elsewhere in the annual report.

(b) Audit Committee Financial Experts

Disclose the number and names of the persons that the registrant's board of directors has determined to be the financial experts serving on the registrant's audit committee, as defined in section 3(a)(58) of the Exchange Act. Also disclose whether the financial expert or experts are independent as that term is used in section 10A(m)(3) of the Exchange Act, and if not, an explanation of why they are not. If the registrant's board of directors has not determined that a financial expert is serving on its audit committee, the registrant must disclose that fact and explain why it does not have such an expert.

Instructions to Item 15(b)

1. You do not need to provide the information called for by this Item 15(b) unless you are using this form as an annual report.

2. For purposes of the determination by the board of directors under this Item 15(b), the term ''financial expert'' means a person who has, through education and experience as a public accountant or auditor, or a principal financial officer, controller, or principal accounting officer, of a company that, at the time the person held such position, was required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act, or experience in one or more positions that involve the performance of similar functions (or that result, in the judgment of the board of directors, in the person's having similar expertise and experience), the following attributes:

a. An understanding of financial statements and generally accepted accounting principles used by the registrant in its primary financial statements;

b. Experience applying such generally accepted accounting principles in connection with the accounting for estimates, accruals, and reserves that are generally comparable to the estimates, accruals and reserves, if any, used in the registrant's financial statements;

c. Experience preparing or auditing financial statements that present accounting issues that are generally comparable to those raised by the registrant's financial statements;

d. Experience with internal controls and procedures for financial reporting; and

e. An understanding of audit committee functions.

3. If the board of directors has determined that a person is a financial expert because, in the board's judgment, he or she has similar expertise and experience to those enumerated, the registrant must disclose the basis for that determination.

4. In evaluating the education and experience of a person, the board of directors should consider the following factors in the aggregate:

a. The level of the person's accounting or financial education, including whether the person has earned an advanced degree in finance or accounting;

b. Whether the person is a certified public accountant, or the equivalent, in good standing, and the length of time that the person actively has practiced as a certified public accountant, or the equivalent;

c. Whether the person is certified or otherwise identified as having accounting or financial experience by a recognized private body that establishes and administers standards in respect of such expertise, whether that person is in good standing with the recognized

private body, and the length of time that the person has been actively certified or identified as having this expertise;

d. Whether the person has served as a principal financial officer, controller or principal accounting officer of a company that, at the time the person held such position, was required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act, and if so, for how long;

e. The person's specific duties while serving as a public accountant, auditor, principal financial officer, controller, principal accounting officer or position involving the performance of similar functions;

f. The person's level of familiarity and experience with all applicable laws and regulations regarding the preparation of financial statements that must be included in reports filed under section 13(a) or 15(d) of the Exchange Act;

g. The level and amount of the person's direct experience reviewing, preparing, auditing or analyzing financial statements that must be included in reports filed under section 13(a) or 15(d) of the Exchange Act;

h. The person's past or current membership on one or more audit committees of companies that, at the time the person held such membership, were required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act;

i. The person's level of familiarity and experience with the use and analysis of financial statements of public companies;

j. Whether the person has any other relevant qualifications or experience that would assist him or her in understanding and evaluating the registrant's financial statements and other financial information and to make knowledgeable and thorough inquiries whether:

i. The financial statements fairly present the financial condition, results of operations and cash flows of the registrant in accordance with generally accepted accounting principles; and

ii. The financial statements and other financial information, taken together, fairly present the financial condition, results of operations and cash flows of the registrant; and

k. The person's level of experience with reconciliation of financial statements with U.S. generally accepted accounting principles.

5. Although the board of directors should consider the factors listed in Instruction 4, those factors are not replacements for, and a financial expert must satisfy, all of the attributes listed in Instruction 2 to this Item 15(b).

6. In the case of foreign private issuers with two-tier boards of directors, for purposes of this Item 15(b), the term ''board of directors'' means the supervisory or non-management board.

7. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item.

(c) Code of Ethics

(1) Disclose whether the registrant has adopted a written code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. If the registrant has not adopted such a code of ethics, explain why it has not done so.

(2) If, during the last fiscal year, the registrant has amended its code of ethics that applies to its principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, or granted a waiver from a provision of the code of ethics to one of these officers or persons, the registrant must briefly describe the nature of the amendment or waiver. Disclosure regarding waivers must include the name of the person to whom the waiver was granted, and the date of the waiver.

Instructions to Item 15(c)

1. You do not need to provide the information called for by this Item 15(c) unless you are using this form as an annual report.

2. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item 15(c).

3. For purposes of this Item 15(c), the term ''code of ethics'' means a codification of such standards that is reasonably designed to deter wrongdoing and to promote:

a. Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

b. Avoidance of conflicts of interest, including disclosure to an appropriate person or persons identified in the code of any material transaction or relationship that reasonably could be expected to give rise to such a conflict;

c. Full, fair, accurate, timely, and understandable disclosure in reports and documents that a registrant files with, or submits to, the Commission and in other public communications made by the registrant;

d. Compliance with applicable governmental laws, rules and regulations;

e. The prompt internal reporting to an appropriate person or persons identified in the code of violations of the code; and

f. Accountability for adherence to the code.

* * * * *

Certifications*

I, [identify the certifying individual], certify that:

1. I have reviewed this annual report on Form 20–F of [identify registrant];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures and internal controls and procedures for financial reporting (as defined in Exchange Act Rules 13a–14 and 15d–14) for the registrant and we have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal controls and procedures for financial reporting, or caused such internal controls and procedures for financial reporting to be designed under their supervision, to provide reasonable assurances that the registrant's financial statements are fairly presented in conformity with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and internal controls and procedures for financial reporting as of the end of the period covered by this report (''Evaluation Date'');

(d) Presented in this report our conclusions about the effectiveness of

the disclosure controls and procedures and internal controls and procedures for financial reporting based on our evaluation as of the Evaluation Date;

(e) Disclosed to the registrant's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function):

(i) All significant deficiencies and material weaknesses in the design or operation of internal controls and procedures for financial reporting which could adversely affect the registrant's ability to record, process, summarize and report financial information required to be disclosed by the registrant in the reports that it files or submits under the Act (15 U.S.C. 78a *et seq.*), within the time periods specified in the U.S. Securities and Exchange Commission's rules and forms; and

(ii) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls and procedures for financial reporting; and

(f) Indicated in this report any significant changes in the registrant's internal controls and procedures for financial reporting or in other factors that could significantly affect internal controls and procedures for financial reporting made during the period covered by this report, including any actions taken to correct significant deficiencies and material weaknesses in the registrant's internal controls and procedures for financial reporting.

Date: _____

_____

[Signature]

_____

[Title]

* Provide a separate certification for each principal executive officer and principal financial officer of the registrant. See Rules 13a–14 and 15d–14. The required certification must be in the exact form set forth above.

Instructions as to Exhibits

* * * * *

10. Any written code of ethics, or amendment to that code of ethics, that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, subject to disclosure under Item 15(c) of this Form.

* * * * *

25. Amend Form 40–F (referenced in § 249.240f) by:

a. Adding paragraphs (7), (8) and (9) to General Instruction B; and

b. Revising the ''Certifications'' section.

The additions and revisions read as follows.

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 40–F

* * * * *

General Instructions

* * * * *

B. Information To Be Filed on This Form

* * * * *

(7) Controls and Procedures

(a) *Evaluation of Disclosure Controls and Procedures and Internal Controls and Procedures for Financial Reporting.* Disclose the conclusions of the registrant's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, about the effectiveness of the registrant's disclosure controls and procedures and internal controls and procedures for financial reporting based on management's evaluation of these controls and procedures in accordance with §§ 240.13a–15 or 240.15d–15 of this chapter as of the end of the period covered by the annual report that includes the disclosure required by this paragraph.

(b) *Changes to Internal Controls and Procedures for Financial Reporting.* Disclose any significant changes to the registrant's internal controls and procedures for financial reporting made during the period covered by the annual report that includes the disclosure required by this paragraph, including any actions taken to correct significant deficiencies and material weaknesses in the registrant's internal controls and procedures for financial reporting.

(c) *Report on management's responsibilities.* Furnish an internal control report of management that includes:

(1) A statement of management's responsibilities for establishing and maintaining adequate internal controls and procedures for financial reporting for the registrant;

(2) Conclusions about the effectiveness of the registrant's internal controls and procedures for financial reporting based on management's evaluation of those controls and procedures in accordance with §§ 240.13a–15 of 240.15d–15 of this chapter as of the end of the registrant's most recent fiscal year;

(3) A statement that the registered public accounting firm that prepared or issued the registrant's audit report relating to the financial statements included in the report containing the disclosure required by this Instruction B.(7)(c) has attested to, and reported on, management's evaluation of the registrant's internal controls and procedures for financial reporting;

(4) The attestation report of the registered public accounting firm that audited or reviewed the financial statements included in the annual report containing the disclosure required by this Instruction B.(7)(c).

Notes to Instruction B.(7)

1. You do not need to provide the information called for by this Instruction B.(7) unless you are using this form as an annual report.

2. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g)) is not required to disclose the information required by this Instruction B.(7).

3. For purposes of this Instruction B.(7), the terms ''disclosure controls and procedures'' and ''internal controls and procedures for financial reporting'' shall have the meanings specified in § 240.13a–14 and § 240.15d–14 of this chapter.

4. If the conclusions of the registrant's principal executive and financial officers are reflected in the conclusions disclosed pursuant to paragraph (c)(2) of this Instruction B.(7), the registrant does not have to include any separate disclosure required by paragraph (a) of this Item regarding the effectiveness of the registrant's internal controls and procedures for financial reporting as of the end of the registrant's most recent fiscal year.

5. The registrant is encouraged, but not required, to include the annual report disclosure required by paragraph (b) of this Instruction B.(7) in the internal control report required by paragraph (c) of this Instruction B.(7), rather than disclosing it elsewhere in the annual report.

(8) Audit Committee Financial Experts

(a) Disclose the number and names of the persons that the board of directors has determined to be the financial experts serving on the registrant's audit committee, as defined in section 3(a)(58) of the Exchange Act. Also disclose whether the financial expert or experts are independent as that term is used in section 10A(m)(3) of the Exchange Act, and if not, an explanation of why they are not. If the registrant's board of directors has not determined that a financial expert is serving on its audit committee, the registrant must disclose that fact and explain why it does not have such an expert.

Notes to Instruction B.(8)

1. You do not need to provide the information called for by this Instruction B.(8) unless you are using this form as an annual report.

2. For purposes of the determination by the board of directors under this Instruction B.(8), the term ''financial expert'' means a person who has, through education and experience as a public accountant or auditor, or a principal financial officer, controller, or principal accounting officer, of a company that, at the time the person held such position, was required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act, or experience in one or more positions that involve the performance of similar functions (or that result, in the judgment of the board of directors, in the person's having similar expertise and experience), the following attributes:

a. An understanding of financial statements and generally accepted accounting principles used by the registrant in its primary financial statements;

b. Experience applying such generally accepted accounting principles in connection with the accounting for estimates, accruals, and reserves that are generally comparable to the estimates, accruals and reserves, if any, used in the registrant's financial statements;

c. Experience preparing or auditing financial statements that present accounting issues that are generally comparable to those raised by the registrant's financial statements;

d. Experience with internal controls and procedures for financial reporting; and

e. An understanding of audit committee functions.

3. If the board of directors has determined that a person is a financial expert because, in the board's judgment, he or she has similar expertise and experience to those enumerated, the registrant must disclose the basis for that determination.

4. In evaluating the education and experience of a person, the board of directors should consider the following factors in the aggregate:

a. The level of the person's accounting or financial education, including whether the person has earned an advanced degree in finance or accounting;

b. Whether the person is a certified public accountant, or the equivalent, in good standing, and the length of time that the person actively has practiced as a certified public accountant, or the equivalent;

c. Whether the person is certified or otherwise identified as having accounting or financial experience by a recognized private body that establishes and administers standards in respect of such expertise, whether that person is in good standing with the recognized private body, and the length of time that the person has been actively certified or identified as having this expertise;

d. Whether the person has served as a principal financial officer, controller or principal accounting officer of a company that, at the time the person held such position, was required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act, and if so, for how long;

e. The person's specific duties while serving as a public accountant, auditor, principal financial officer, controller, principal accounting officer or position involving the performance of similar functions;

f. The person's level of familiarity and experience with all applicable laws and regulations regarding the preparation of financial statements that must be included in reports filed under section 13(a) or 15(d) of the Exchange Act;

g. The level and amount of the person's direct experience reviewing, preparing, auditing or analyzing financial statements that must be included in reports filed under section 13(a) or 15(d) of the Exchange Act;

h. The person's past or current membership on one or more audit committees of companies that, at the time the person held such membership, were required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act;

i. The person's level of familiarity and experience with the use and analysis of financial statements of public companies;

j. Whether the person has any other relevant qualifications or experience that would assist him or her in understanding and evaluating the registrant's financial statements and other financial information and to make knowledgeable and thorough inquiries whether:

i. The financial statements fairly present the financial condition, results of operations and cash flows of the registrant in accordance with generally accepted accounting principles; and

ii. The financial statements and other financial information, taken together, fairly present the financial condition, results of operations and cash flows of the registrant; and

k. The person's level of experience with reconciliation of financial statements with U.S. generally accepted accounting principles.

5. Although the board of directors should consider the factors listed in Note 4, those factors are not replacements for, and a financial expert must satisfy, all of the attributes listed in Note 2 to this Instruction B.(8).

6. In the case of foreign private issuers with two-tier boards of directors, for purposes of this Instruction B.(8), the term ''board of directors'' means the supervisory or non-management board.

7. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Instruction B.(8).

(9) Code of Ethics

(a) Disclose whether the registrant has adopted a written code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. Such code of ethics, or amendment to that code of ethics, must be attached as an exhibit and filed with this Form. If the registrant has not adopted such a code of ethics, explain why it has not done so.

(b) If, during the last fiscal year, the registrant has amended its code of ethics that applies to its principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, or granted a waiver from a provision of the code of ethics to one of these officers or persons, the registrant must briefly describe the nature of the amendment or waiver. Disclosure regarding waivers must include the name of the person to whom the waiver was granted, and the date of the waiver.

Notes to Instruction B.(9)

1. You do not need to provide the information called for by this Instruction B.(9) unless you are using this form as an annual report.

2. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Instruction B.(9).

3. For purposes of the required disclosures, the term ''code of ethics'' means a codification of such standards that is reasonably designed to deter wrongdoing and to promote:

(a) Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(b) Avoidance of conflicts of interest, including disclosure to an appropriate person or persons identified in the code of any material transaction or relationship that reasonably could be expected to give rise to such a conflict;

(c) Full, fair, accurate, timely, and understandable disclosure in reports and documents that a registrant files with, or submits to, the Commission and in other public communications made by the registrant;

(d) Compliance with applicable governmental laws, rules and regulations;

(e) The prompt internal reporting to an appropriate person or persons identified in the code of violations of the code; and

(f) Accountability for adherence to the code.

* * * * *

Certifications*

I, [identify the certifying individual], certify that:

1. I have reviewed this annual report on Form 40–F of [identify registrant];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures and internal controls and procedures for financial reporting (as defined in Exchange Act Rules 13a–14 and 15d–14) for the registrant and we have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal controls and procedures for financial reporting, or caused such internal controls and procedures for financial reporting to be designed under their supervision, to provide reasonable assurances that the registrant's financial statements are fairly presented in conformity with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and internal controls and procedures for financial reporting as of the end of the period covered by this report (''Evaluation Date'');

(d) Presented in this report our conclusions about the effectiveness of the disclosure controls and procedures and internal controls and procedures for financial reporting based on our evaluation as of the Evaluation Date;

(e) Disclosed to the registrant's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function):

(i) All significant deficiencies and material weaknesses in the design or operation of internal controls and procedures for financial reporting which could adversely affect the registrant's ability to record, process, summarize and report financial information required to be disclosed by the registrant in the reports that it files or submits under the Act (15 U.S.C. 78a *et seq.*), within the time periods specified in the U.S. Securities and Exchange Commission's rules and forms; and

(ii) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls and procedures for financial reporting; and

(f) Indicated in this report any significant changes in the registrant's internal controls and procedures for financial reporting or in other factors that could significantly affect internal controls and procedures for financial reporting made during the period covered by this report, including any actions taken to correct significant deficiencies and material weaknesses in the registrant's internal controls and procedures for financial reporting.

Date: _____

_____

[Signature]

_____

[Title]

* Provide a separate certification for each principal executive officer and principal financial officer of the registrant. See Rules 13a–14 and 15d–14. The required certification must be in the exact form set forth above.

26. Amend Form 10–K (referenced in § 249.310) by:

a. Revising Item 10 in Part III;

b. Redesignating Item 15 as Item 16 in Part IV;

c. Adding new Item 15 to Part III; and

d. Revising the ''Certifications'' section.

The revisions and additions read as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–K

Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

* * * * *

Part III

* * * * *

Item 10. Directors and Executive Officers of the Registrant

Furnish the information required by Items 401, 405 and 406 of Regulation S–K (§§ 229.401, 229.405 and 229.406 of this chapter).

* * * * *

Item 15. Audit Committee Financial Experts

Furnish the information required by Item 309 of Regulation S–K (§ 229.309 of this chapter).

* * * * *

Certifications*

I, [identify the certifying individual], certify that:

1. I have reviewed this annual report on Form 10–K of [identify registrant];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures and internal controls and procedures for financial reporting (as defined in Exchange Act Rules 13a–14 and 15d–14) for the registrant and we have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal controls and procedures for financial reporting, or caused such internal controls and procedures for financial reporting to be

designed under their supervision, to provide reasonable assurances that the registrant's financial statements are fairly presented in conformity with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and internal controls and procedures for financial reporting as of the end of the period covered by this report (''Evaluation Date'');

(d) Presented in this report our conclusions about the effectiveness of the disclosure controls and procedures and internal controls and procedures for financial reporting based on our evaluation as of the Evaluation Date;

(e) Disclosed to the registrant's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function):

(i) All significant deficiencies and material weaknesses in the design or operation of internal controls and procedures for financial reporting which could adversely affect the registrant's ability to record, process, summarize and report financial information required to be disclosed by the registrant in the reports that it files or submits under the Act (15 U.S.C. 78a *et seq.*), within the time periods specified in the U.S. Securities and Exchange Commission's rules and forms; and

(ii) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls and procedures for financial reporting; and

(f) Indicated in this report any significant changes in the registrant's internal controls and procedures for financial reporting or in other factors that could significantly affect internal controls and procedures for financial reporting made during the period covered by this report, including any actions taken to correct significant deficiencies and material weaknesses in the registrant's internal controls and procedures for financial reporting.

Date: _____

_____

[Signature]

_____

[Title]

* Provide a separate certification for each principal executive officer and principal financial officer of the registrant. See Rules 13a–14 and 15d–14. The required certification must be in the exact form set forth above.

* * * * *

29. Amend Form 10–KSB (referenced in § 249.310b) by:

a. Revising Item 9 in Part III;

b. Adding Item 15 in Part III; and

c. Revising the ''Certifications'' section.

The revisions and addition read as follows:

Note: The text of Form 10–KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–KSB

[ ] Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

* * * * *

Part III

* * * * *

Item 9. Directors and Executive Officers of the Registrant

Furnish the information required by Items 401, 405 and 406 of Regulation S–B (§§ 228.401, 228.405, and 228.406 of this chapter).

* * * * *

Item 15. Audit Committee Financial Experts

Provide the information required by Item 309 of Regulation S–B (§ 228.309 of this chapter).

* * * * *

Certifications*

I, [identify the certifying individual], certify that:

1. I have reviewed this annual report on Form 10–KSB of [identify registrant];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the small business issuer as of, and for, the periods presented in this report;

4. The small business issuer's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures and internal controls and procedures for financial reporting (as defined in Exchange Act Rules 13a–14 and 15d–14) for the small business issuer and we have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal controls and procedures for financial reporting, or caused such internal controls and procedures for financial reporting to be designed under their supervision, to provide reasonable assurances that the small business issuer's financial statements are fairly presented in conformity with generally accepted accounting principles;

(c) Evaluated the effectiveness of the small business issuer's disclosure controls and procedures and internal controls and procedures for financial reporting as of the end of the period covered by this report (''Evaluation Date'');

(d) Presented in this report our conclusions about the effectiveness of the disclosure controls and procedures and internal controls and procedures for financial reporting based on our evaluation as of the Evaluation Date;

(e) Disclosed to the small business issuer's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function):

(i) All significant deficiencies and material weaknesses in the design or operation of internal controls and procedures for financial reporting which could adversely affect the small business issuer's ability to record, process, summarize and report financial information required to be disclosed by the small business issuer in the reports that it files or submits under the Act (15 U.S.C. 78a *et seq.*), within the time periods specified in the U.S. Securities and Exchange Commission's rules and forms; and

(ii) Any fraud, whether or not material, that involves management or other employees who have a significant role in the small business issuer's internal controls and procedures for financial reporting; and

(f) Indicated in this report any significant changes in the small business issuer's internal controls and procedures for financial reporting or in other factors that could significantly affect internal controls and procedures for financial reporting made during the period covered by this report, including any actions taken to correct significant deficiencies and material weaknesses in the small business issuer's internal controls and procedures for financial reporting.

Date: _____

_____
[Signature]

_____
[Title]

* Provide a separate certification for each principal executive officer and principal financial officer of the small business issuer. *See* Rules 13a–14 and 15d–14. The required certification must be in the exact form set forth above.

* * * * *

30. Amend § 249.322 by revising paragraph (a) to read as follows:

§ 249.322 Form 12b–25—Notification of late filing.

(a) This form shall be filed pursuant to § 240.12b–25 of this chapter by issuers who are unable to file timely all or any required portion of an annual or transition report on Form 10–K and Form 10–KSB, 20–F, or 11–K (§§ 249.310, 249.310b, 249.220f or 249.311) or a quarterly or transition report on Form 10–Q and Form 10–QSB (§§ 249.308a and 249.308b) or a current report on Form 8–K (§ 249.308) pursuant to section 13 or 15(d) of the Act (15 U.S.C. 78m or 78o(d)) or a semi-annual, annual or transition report on Form N–SAR or Form N–CSR (17 CFR 274.101 or 274.128) pursuant to section 13 or 15(d) of the Act or section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a–29). The filing shall consist of a signed original and three conformed copies, and shall be filed with the Commission at Washington, DC 20549, no later than one business day after the due date for the periodic report in question. Copies of this form may be obtained from ''Publications,'' Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549 and at our Web site at *http://www.sec.gov.*

* * * * *

31. Amend Form 12b–25 (referenced in § 249.322) by:

a. Revising the preamble;

b. Revising paragraph (b) of Part II; and

c. Revising Part III to read as follows:

Note: The text of Form 12b–25 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 12b–25

Notification of Late Filing

(Check One): __ Form 10–K __ Form 20–F __ Form 11–K __ Form 10–Q __ Form 8–K __ Form N–SAR __ Form N–CSR

* * * * *

Part II—Rules 12b–25(b) and (c)

* * * * *

(b) The subject annual report, semi-annual report, transition report on Form 10–K, Form 20–F, Form 11–K, Form N–SAR or Form N–CSR, or portion thereof, will be filed on or before the fifteenth calendar day following the prescribed due date; or the subject quarterly report or transition report on Form 10–Q, or portion thereof, will be filed on or before the fifth calendar day following the prescribed due date; or the subject current report on Form 8–K will be filed on or before the second business day following the prescribed due date; and

* * * * *

Part III—Narrative

State below in reasonable detail why Forms 10–K, 20–F, 11–K, 10–Q, 8–K, N–SAR, N–CSR, or the transition report or portion thereof, could not be filed within the prescribed time period.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

32. The general authority citation for part 270 is revised to read as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted;

* * * * *

33. Amend § 270.30a–2 by:

a. Revising paragraph (b)(4);

b. Removing paragraphs (b)(5) and (b)(6); and

c. Adding paragraph (d).

The revisions and additions read as follows:

§ 270.30a–2 Certification of disclosure in annual and semi-annual reports.

* * * * *

(b) * * *

(4) He or she and the other certifying officers are responsible for establishing and maintaining disclosure controls and procedures and internal controls and procedures for financial reporting (as such terms are defined in paragraphs (c) and (d) of this section) for the investment company and have:

(i) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under their supervision, to ensure that material information relating to the investment company, including its consolidated subsidiaries, is made known to them by others within those entities, particularly during the period in which periodic reports are being prepared;

(ii) Designed such internal controls and procedures for financial reporting, or caused such internal controls and procedures for financial reporting to be designed under their supervision, to provide reasonable assurances that the investment company's financial statements are fairly presented in conformity with generally accepted accounting principles;

(iii) Evaluated the effectiveness of the investment company's disclosure controls and procedures as of the end of the period covered by the report (''Evaluation Date'');

(iv) Presented in the report their conclusions about the effectiveness of the disclosure controls and procedures based on their evaluation as of the Evaluation Date; and

(v) Disclosed to the investment company's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function):

(A) All significant deficiencies and material weaknesses in the design or operation of internal controls and procedures for financial reporting which could adversely affect the investment company's ability to record, process, summarize, and report financial information required to be disclosed by the investment company in the reports that it files or submits under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) and the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), within the time periods specified in the Commission's rules and forms; and

(B) Any fraud, whether or not material, that involves management or other employees who have a significant role in the investment company's internal controls and procedures for financial reporting; and

(vi) Indicated in the report any significant changes in the investment company's internal controls and procedures for financial reporting or in other factors that could significantly affect internal controls and procedures for financial reporting made during the period covered by the report, including any actions taken to correct significant deficiencies and material weaknesses in the investment company's internal controls and procedures for financial reporting.

* * * * *

(d) For purposes of this section, the term *internal controls and procedures for financial reporting* means controls that pertain to the preparation of financial statements for external purposes that are fairly presented in conformity with generally accepted accounting principles as addressed by the Codification of Statements on Auditing Standards § 319 or any superseding definition or other literature that is issued or adopted by the Public Company Accounting Oversight Board.

34. Amend § 270.30a–3 (as proposed in 67 FR 57298 (9/9/02)) by revising paragraph (b) to read as follows:

§ 270.30a–3 Disclosure controls and procedures related to preparation of required filings.

* * * * *

(b) In connection with each report, including transition reports, that requires certification under § 270.30a–2, the registered investment company's management must conduct an evaluation, with the participation of the registered investment company's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, of the effectiveness, as of the end of the period covered by the report, of the design and operation of the registered investment company's disclosure controls and procedures.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

35. The authority citation for Part 274 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

Section 274.101 is also issued under secs. 3(a), 302, 406, and 407, Pub. L. No. 107–204, 116 Stat. 745.

Section 274.128 is also issued under secs. 3(a), 302, 406, and 407, Pub. L. No. 107–204, 116 Stat. 745.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

36. Amend Form N–SAR (referenced in §§ 249.330 and 274.101) by:

a. Revising the reference ''133'' in item 6 to read ''134'';

b. Redesignating item 133 as item 134;

c. Adding new item 133;

d. Revising newly redesignated item 134;

e. Revising the reference ''items 77 and 102'' in paragraph (1) of General Instruction D, ''Preparation of Report,'' to read ''items 77, 102, and 134(b)'';

f. Revising the reference ''133'' in the fifth paragraph of General Instruction A to read ''134'';

g. Revising paragraphs (a)(i) and (a)(ii) of sub-item 77Q3 in Instructions to Specific Items;

h. Revising the Certification contained in paragraph (a)(iii) of sub-item 77Q3 in Instructions to Specific Items;

i. Designating the current Instruction to sub-item 102P3 as Instruction (c);

j. Adding Instructions (a) and (b) to sub-item 102P3;

k. Adding an Instruction to item 133;

l. Revising the Instruction to newly redesignated item 134; and

m. Revising the reference ''133'' in the Instructions to the Signature Page to read ''134.''

These additions and revisions read as follows:

Note: The text of Form N–SAR does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–SAR

* * * * *

Item 133: Code of Ethics

(a) Disclose whether each of the registrant's sponsor, depositor, trustee, and principal underwriter has adopted a written code of ethics that applies to the principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions of, respectively, the registrant's sponsor, depositor, trustee, and principal underwriter. If any of the registrant's sponsor, depositor, trustee, and principal underwriter has not adopted such a code of ethics, explain why it has not done so.

(b) If the registrant's sponsor, depositor, trustee, or principal underwriter has amended its code of ethics that applies to its principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, or granted a waiver, including an implicit waiver, from a provision of the code of ethics to one of these officers or persons, the registrant must briefly describe the nature of the amendment or waiver. Disclosure regarding waivers must include the name of the person to whom the waiver was granted, and the date of the waiver.

(c) If the registrant plans to elect to disclose any amendments to, or waivers from, its sponsor's, depositor's, trustee's, or principal underwriter's codes of ethics on the registrant's Internet website, disclose the registrant's Internet address and its intention to disclose these events on its website.

Item 134

Include the following exhibits:

(a)The certifications required by rule 30a–2 under the Investment Company Act (17 CFR 270.30a–2).

(b) Any written code of ethics, or amendment to that code of ethics, that applies to the principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions of registrant's sponsor, depositor, trustee, or principal underwriter, subject to disclosure under Item 133 of this Form.

* * * * *

Instructions to Specific Items

* * * * *

Sub-Item 77Q3

* * * * *

(a) * * *

(i) Disclose the conclusions of the registrant's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, about the effectiveness of the registrant's disclosure controls and procedures (as defined in rule 30a–2(c) under the Act (17 CFR 270.30a–2(c))) based on management's evaluation of these controls and procedures in accordance with Rule 13a–15(c) or 15d–15(c) under the 1934 Act (17 CFR 240.13a–15(c) or 15d–15(c)) and Rule 30a–3(b) under the Act (17 CFR 270.30a–3(b)) as of the end of the period covered by the report that includes the disclosure required by this paragraph.

(ii) Disclose any significant changes to the registrant's internal controls and procedures for financial reporting (as defined in rule 30a–2(d) under the Act (17 CFR 270.30a–2(d))) made during the period covered by the report that includes the disclosure required by this paragraph, including any actions taken to correct significant deficiencies and material weaknesses in the registrant's internal controls and procedures for financial reporting.

(iii) * * *

Certifications

I, [identify the certifying individual], certify that:

1. I have reviewed this report on Form N–SAR, including exhibits, of [identify registrant];

2. Based on my knowledge, this report, including exhibits, does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial information included in this report, including exhibits, and the financial statements on which the financial information is based, fairly present in all material respects the financial condition, results of operations, changes in net assets, and cash flows (if the financial statements are required to include a statement of cash flows) of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures and internal controls and procedures for financial reporting (as defined in rule 30a–2(c) and (d) under the Investment Company Act) for the registrant and we have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal controls and procedures for financial reporting, or caused such internal controls and procedures for financial reporting to be designed under our supervision, to provide reasonable assurances that the registrant's financial statements are fairly presented in conformity with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of the end of the period covered by this report (''Evaluation Date'');

(d) Presented in this report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

(e) Disclosed to the registrant's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function):

(i) All significant deficiencies and material weaknesses in the design or operation of internal controls and procedures for financial reporting which could adversely affect the registrant's ability to record, process, summarize, and report financial information required to be disclosed by the registrant in the reports that it files or submits under the Securities Exchange Act of 1934 and the Investment Company Act of 1940, within the time periods specified in the U.S. Securities and Exchange Commission's rules and forms; and

(ii) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls and procedures for financial reporting; and

(f) Indicated in this report any significant changes in the registrant's internal controls and procedures for financial reporting or in other factors that could significantly affect internal controls and procedures for financial reporting made during the period covered by this report, including any actions taken to correct significant deficiencies and material weaknesses in the registrant's internal controls and procedures for financial reporting.

Date: _____

_____

[Signature]

_____

[Title]

* * * * *

Sub-Item 102P3

* * * * *

Instructions: (a)(1) Disclose whether each of the registrant, its investment adviser, and its principal underwriter has adopted a written code of ethics that applies to the principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions of, respectively, the registrant, its investment adviser, and its principal underwriter. If any of the registrant, its investment adviser, and its principal underwriter has not adopted such a code of ethics, explain why it has not done so.

(2) If the registrant, its investment adviser, or its principal underwriter has amended its code of ethics that applies to its principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, or granted a waiver, including an implicit waiver, from a provision of the code of ethics to one of these officers or persons, the registrant must briefly describe the nature of the amendment or waiver. Disclosure regarding waivers must include the name of the person to whom the waiver was granted, and the date of the waiver. The registrant does not need to provide any information pursuant to this paragraph (a)(2) if it discloses the required information on its Internet website within two business days following the date of the amendment or waiver and the registrant has disclosed in its most recently filed report on this form its Internet address and intention to provide disclosure in this manner. If the amendment or waiver occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business, then the two business day period shall begin to run on and include the first business day thereafter. If the registrant elects to disclose this information through its website, such information must remain available on the website for at least a 12-month period. The registrant must retain the information for a period of not less than six years following the end of the fiscal year in which the amendment or waiver occurred. Upon request, the registrant must furnish to the Commission or its staff a copy of any or all information retained pursuant to this requirement.

(3) If the registrant plans to elect to disclose any amendments to, or waivers from, its code of ethics, or its investment adviser's or principal underwriter's codes of ethics, on the registrant's Internet website, disclose the registrant's Internet address and its intention to disclose these events on its website.

(4) Include any written code of ethics, or amendment to that code of ethics, that applies to the principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions of the registrant, its investment adviser, or its principal underwriter, subject to disclosure under paragraphs (a)(1) and (a)(2) of this Instruction.

(5) The requirements of paragraphs (a)(1) through (a)(4) of this Instruction do not apply with respect to a code of ethics of any principal underwriter of the registrant unless:

(i) The principal underwriter is an affiliated person of the registrant or the registrant's investment adviser; or

(ii) An officer, director, or general partner of the principal underwriter serves as an officer, director, or general partner of the registrant or of the registrant's investment adviser.

(6) For purposes of this Instruction 102P3(a), the term ''code of ethics'' means a codification of such standards that is reasonably designed to deter wrongdoing and to promote:

(i) Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(ii) Avoidance of conflicts of interest, including disclosure to an appropriate person or persons identified in the code of any material transaction or relationship that reasonably could be expected to give rise to such a conflict;

(iii) Full, fair, accurate, timely, and understandable disclosure in reports and documents that are filed with, or submitted to, the Commission and in other public communications;

(iv) Compliance with applicable governmental laws, rules and regulations;

(v) The prompt internal reporting to an appropriate person or persons identified in the code of violations of the code; and

(vi) Accountability for adherence to the code.

(7) The information required by paragraph (a)(1) of this Instruction is

only required for a report on this form filed for the registrant's fiscal year.

(b)(1) Disclose the number and names of the persons that the registrant's board of directors has determined to be the financial experts serving on the registrant's audit committee, as defined in section 3(a)(58) of the 1934 Act, as of the end of the period covered by the report. Also disclose whether the financial expert or experts are ''independent,'' and if not, an explanation of why they are not. For this purpose, a financial expert would be considered to be ''independent'' if he or she (i) meets the criteria set forth in section 10A(m)(3)(B)(i) of the 1934 Act; and (ii) is not an ''interested person'' of the investment company as defined in section 2(a)(19) of the Act. If the registrant's board of directors has not determined that a financial expert is serving on its audit committee, the registrant must disclose that fact and explain why it does not have such an expert.

(2) For purposes of the determination by the board of directors under this Instruction 102P3(b), the term ''financial expert'' means a person who has, through education and experience as a public accountant or auditor, or a principal financial officer, controller, or principal accounting officer, of a company that, at the time the person held such position, was required to file reports pursuant to section 13(a) or 15(d) of the 1934 Act, or experience in one or more positions that involve the performance of similar functions (or that results, in the judgment of the board of directors, in the person's having similar expertise and experience), the following attributes:

(i) An understanding of generally accepted accounting principles and financial statements;

(ii) Experience applying such generally accepted accounting principles in connection with the accounting for estimates, accruals, and reserves that are generally comparable to the estimates, accruals, and reserves, if any, used in the registrant's financial statements;

(iii) Experience preparing or auditing financial statements that present accounting issues that are generally comparable to those raised by the registrant's financial statements;

(iv) Experience with internal controls and procedures for financial reporting; and

(v) An understanding of audit committee functions.

(3) If the board of directors has determined that a person is a financial expert because, in the board's judgment, he or she has similar expertise and experience to those enumerated, the registrant must disclose the basis for that determination.

(4) In evaluating the education and experience of a person, the board of directors should consider the following factors in the aggregate:

(i) The level of the person's accounting or financial education, including whether the person has earned an advanced degree in finance or accounting;

(ii) Whether the person is a certified public accountant, or the equivalent, in good standing, and the length of time that the person actively has practiced as a certified public accountant, or the equivalent;

(iii) Whether the person is certified or otherwise identified as having accounting or financial experience by a recognized private body that establishes and administers standards in respect of such expertise, whether that person is in good standing with the recognized private body, and the length of time that the person has been actively certified or identified as having this expertise;

(iv) Whether the person has served as a principal financial officer, controller, or principal accounting officer of a company that, at the time the person held such position, was required to file reports pursuant to section 13(a) or 15(d) of the 1934 Act, and if so, for how long;

(v) The person's specific duties while serving as a public accountant, auditor, principal financial officer, controller, principal accounting officer or position involving the performance of similar functions;

(vi) The person's level of familiarity and experience with all applicable laws and regulations regarding the preparation of financial statements that must be included in reports filed under section 13(a) or 15(d) of the 1934 Act;

(vii) The level and amount of the person's direct experience reviewing, preparing, auditing, or analyzing financial statements that must be included in reports filed under section 13(a) or 15(d) of the 1934 Act;

(viii) The person's past or current membership on one or more audit committees of companies that, at the time the person held such membership, were required to file reports pursuant to section 13(a) or 15(d) of the 1934 Act;

(ix) The person's level of familiarity and experience with the use and analysis of financial statements of public companies; and

(x) Whether the person has any other relevant qualifications or experience that would assist him or her in understanding and evaluating the registrant's financial statements and other financial information and to make knowledgeable and thorough inquiries whether: (A) the financial statements fairly present the financial condition, results of operations, and cash flows of the registrant in accordance with generally accepted accounting principles; and (B) the financial statements and other financial information, taken together, fairly present the financial condition, results of operations, and cash flows of the registrant.

(5) Although the board of directors should consider the factors listed in paragraph (b)(4) of this Instruction, those factors are not replacements for, and a financial expert must satisfy, all of the attributes listed in paragraph (b)(2) of this Instruction.

(c) * * *

* * * * *

Item 133

* * * * *

Instructions: (a) The requirements of Item 133 do not apply with respect to a code of ethics of any principal underwriter of the registrant unless:

(1) The principal underwriter is an affiliated person of the registrant or the registrant's sponsor, depositor, or trustee; or

(2) An officer, director, or general partner of the principal underwriter serves as an officer, director, or general partner of the registrant's sponsor, depositor, or trustee.

(b) For purposes of Item 133, the term ''code of ethics'' means a codification of such standards that is reasonably designed to deter wrongdoing and to promote:

(1) Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(2) Avoidance of conflicts of interest, including disclosure to an appropriate person or persons identified in the code of any material transaction or relationship that reasonably could be expected to give rise to such a conflict;

(3) Full, fair, accurate, timely, and understandable disclosure in reports and documents that are filed with, or submitted to, the Commission and in other public communications;

(4) Compliance with applicable governmental laws, rules and regulations;

(5) The prompt internal reporting to an appropriate person or persons identified in the code of violations of the code; and

(6) Accountability for adherence to the code.

(c) The registrant does not need to provide any information pursuant to

paragraph (b) of this Item if it discloses the required information on its Internet website within two business days following the date of the amendment or waiver and the registrant has disclosed in its most recently filed report on this form its Internet address and intention to provide disclosure in this manner. If the amendment or waiver occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business, then the two business day period shall begin to run on and include the first business day thereafter. If the registrant elects to disclose this information through its website, such information must remain available on the website for at least a 12-month period. The registrant must retain the information for a period of not less than six years following the end of the fiscal year in which the amendment or waiver occurred. Upon request, the registrant must furnish to the Commission or its staff a copy of any or all information retained pursuant to this requirement.

Item 134

In responding to sub-item 134(a), include the exhibit required by instruction (a) for sub-item 77Q3. The registrant may omit paragraph 3 of the certification required by instruction (a)(iii).

* * * * *

37. Amend Form N–CSR (referenced in §§ 249.331 and 274.128; as proposed in 67 FR 57298 (9/9/02) and 67 FR 60828 (9/26/02)) by:

a. Revising General Instruction D;
b. Redesignating General Instruction E as General Instruction F;
c. Adding new General Instruction E;
d. Removing Item 1;
e. Redesignating Items 2, 3, and 4 as Items 1, 2, and 5;
f. Adding new Items 3, 4 and 6;
g. Revising newly redesignated Item 5; and
h. Revising the ''Certifications'' section, to read as follows:

Note: The text of Form N–CSR does not, and this amendment will not, appear in the Code of Federal Regulations

Form N–CSR

* * * * *

General Instructions

* * * * *

D. Incorporation by Reference

A registrant may incorporate by reference information required by Item 6(b), but no other Items of the Form shall be answered by incorporating any information by reference. All incorporation by reference must comply with the requirements of this Form and the following rules on incorporation by reference: Rule 10(d) of Regulation S–K under the Securities Act of 1933 [17 CFR 229.10(d)] (general rules on incorporation by reference, which, among other things, prohibit, unless specifically required by this Form, incorporating by reference a document that includes incorporation by reference to another document, and limits incorporation to documents filed within the last 5 years, with certain exceptions); Rule 303 of Regulation S–T [17 CFR 232.303] (specific requirements for electronically filed documents); Rules 12b–23 and 12b–32 under the Securities Exchange Act of 1934 (additional rules on incorporation by reference for reports filed pursuant to Sections 13 and 15(d) of the Securities Exchange Act of 1934); and Rules 0–4, 8b–23, and 8b–32 under the Investment Company Act of 1940 [17 CFR 270.0–4, 270.8b–23, and 270.8b–32] (additional rules on incorporation by reference for investment companies).

E. Definitions

Unless the context clearly indicates the contrary, terms used in this Form N–CSR have meanings as defined in the Investment Company Act of 1940 and the rules and regulations thereunder. Unless otherwise indicated, all references in the form to statutory sections or to rules are sections of the Investment Company Act of 1940 and the rules and regulations thereunder.

* * * * *

Item 3. Code of Ethics

(a) Disclose whether, as of the end of the period covered by the report, each of the registrant, its investment adviser, and its principal underwriter has adopted a written code of ethics that applies to the principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions of, respectively, the registrant, its investment adviser, and its principal underwriter. If any of the registrant, its investment adviser, and its principal underwriter has not adopted such a code of ethics, explain why it has not done so.

Instruction. The information required by this Item 3(a) is only required in a report on this Form N–CSR that is required by Item 6(a) to include a copy of an annual report transmitted to stockholders.

(b) If the registrant, its investment adviser, or its principal underwriter has, during the period covered by the report, amended its code of ethics that applies to its principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions or granted a waiver, including an implicit waiver, from a provision of the code of ethics to one of these officers or persons, the registrant must briefly describe the nature of the amendment or waiver. Disclosure regarding waivers must include the name of the person to whom the waiver was granted, and the date of the waiver.

(c) If the registrant plans to elect to disclose any amendments to, or waivers from, its code of ethics, or its investment adviser's or principal underwriter's codes of ethics, on the registrant's Internet website, disclose the registrant's Internet address and its intention to disclose these events on its website.

Instructions. 1. The requirements of this Item 3 do not apply with respect to a code of ethics of any principal underwriter of the registrant unless:

(a) The principal underwriter is an affiliated person of the registrant or the registrant's investment adviser; or

(b) An officer, director, or general partner of the principal underwriter serves as an officer, director, or general partner of the registrant or of the registrant's investment adviser.

2. For purposes of this Item 3, the term ''code of ethics'' means a codification of such standards that is reasonably designed to deter wrongdoing and to promote:

(a) Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(b) Avoidance of conflicts of interest, including disclosure to an appropriate person or persons identified in the code of any material transaction or relationship that reasonably could be expected to give rise to such a conflict;

(c) Full, fair, accurate, timely, and understandable disclosure in reports and documents that are filed with, or submitted to, the Commission and in other public communications;

(d) Compliance with applicable governmental laws, rules and regulations;

(e) The prompt internal reporting to an appropriate person or persons identified in the code of violations of the code; and

(f) Accountability for adherence to the code.

3. The registrant does not need to provide any information pursuant to this Item if it discloses the required information on its Internet website within two business days following the date of the amendment or waiver and the registrant has disclosed in its most recently filed report on this Form N–CSR its Internet address and intention to

provide disclosure in this manner. If the amendment or waiver occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business, then the two business day period shall begin to run on and include the first business day thereafter. If the registrant elects to disclose this information through its website, such information must remain available on the website for at least a 12-month period. The registrant must retain the information for a period of not less than six years following the end of the fiscal year in which the amendment or waiver occurred. Upon request, the registrant must furnish to the Commission or its staff a copy of any or all information retained pursuant to this requirement.

Item 4. Audit Committee Financial Experts

Disclose the number and names of the persons that the registrant's board of directors has determined to be the financial experts serving on the registrant's audit committee, as defined in section 3(a)(58) of the Securities Exchange Act of 1934, as of the end of the period covered by the report. Also disclose whether the financial expert or experts are ''independent,'' and if not, an explanation of why they are not. For this purpose, a financial expert would be considered to be ''independent'' if he or she (i) meets the criteria set forth in section 10A(m)(3)(B)(i) of the Securities Exchange Act of 1934; and (ii) is not an ''interested person'' of the investment company as defined in section 2(a)(19) of the Investment Company Act of 1940. If the registrant's board of directors has not determined that a financial expert is serving on its audit committee, the registrant must disclose that fact and explain why it does not have such an expert.

Instructions. 1. The information required by this Item 4 is only required in a report on this Form N-CSR that is required by Item 6(a) to include a copy of an annual report transmitted to stockholders.

2. For purposes of the determination by the board of directors under this Item 4, the term ''financial expert'' means a person who has, through education and experience as a public accountant or auditor, or a principal financial officer, controller, or principal accounting officer, of a company that, at the time the person held such position, was required to file reports pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934, or experience in one or more positions that involve the performance of similar functions (or that results, in the judgment of the board of directors, in the person's having similar expertise and experience), the following attributes:

a. An understanding of generally accepted accounting principles and financial statements;

b. Experience applying such generally accepted accounting principles in connection with the accounting for estimates, accruals, and reserves that are generally comparable to the estimates, accruals, and reserves, if any, used in the registrant's financial statements;

c. Experience preparing or auditing financial statements that present accounting issues that are generally comparable to those raised by the registrant's financial statements;

d. Experience with internal controls and procedures for financial reporting; and

e. An understanding of audit committee functions.

3. If the board of directors has determined that a person is a financial expert because, in the board's judgment, he or she has similar expertise and experience to those enumerated, the registrant must disclose the basis for that determination.

4. In evaluating the education and experience of a person, the board of directors should consider the following factors in the aggregate:

a. The level of the person's accounting or financial education, including whether the person has earned an advanced degree in finance or accounting;

b. Whether the person is a certified public accountant, or the equivalent, in good standing, and the length of time that the person actively has practiced as a certified public accountant, or the equivalent;

c. Whether the person is certified or otherwise identified as having accounting or financial experience by a recognized private body that establishes and administers standards in respect of such expertise, whether that person is in good standing with the recognized private body, and the length of time that the person has been actively certified or identified as having this expertise;

d. Whether the person has served as a principal financial officer, controller, or principal accounting officer of a company that, at the time the person held such position, was required to file reports pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934, and if so, for how long;

e. The person's specific duties while serving as a public accountant, auditor, principal financial officer, controller, principal accounting officer or position involving the performance of similar functions;

f. The person's level of familiarity and experience with all applicable laws and regulations regarding the preparation of financial statements that must be included in reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934;

g. The level and amount of the person's direct experience reviewing, preparing, auditing, or analyzing financial statements that must be included in reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934;

h. The person's past or current membership on one or more audit committees of companies that, at the time the person held such membership, were required to file reports pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934;

i. The person's level of familiarity and experience with the use and analysis of financial statements of public companies; and

j. Whether the person has any other relevant qualifications or experience that would assist him or her in understanding and evaluating the registrant's financial statements and other financial information and to make knowledgeable and thorough inquiries whether: (i) the financial statements fairly present the financial condition, results of operations and cash flows of the registrant in accordance with generally accepted accounting principles; and (ii) the financial statements and other financial information, taken together, fairly present the financial condition, results of operations, and cash flows of the registrant.

5. Although the board of directors should consider the factors listed in Instruction 4, those factors are not replacements for, and a financial expert must satisfy, all of the attributes listed in Instruction 2 to this Item.

Item 5. Controls and Procedures

(a) Disclose the conclusions of the registrant's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, about the effectiveness of the registrant's disclosure controls and procedures (as defined in rule 30a–2(c) under the Investment Company Act of 1940 (17 CFR 270.30a–2(c))) based on management's evaluation of these controls and procedures in accordance with Rule 13a–15(c) or 15d–15(c) under the Securities Exchange Act of 1934 (17 CFR 240.13a–15(c) or 240.15d–15(c)) and Rule 30a–3(b) under the Investment Company Act of 1940 (17 CFR 270.30a–3(b)) as of the end of the period covered

by the report that includes the disclosure required by this paragraph.

(b) Disclose any significant changes to the registrant's internal controls and procedures for financial reporting (as defined in rule 30a–2(d) under the Investment Company Act of 1940 (17 CFR 270.30a–2(d))) made during the period covered by the report that includes the disclosure required by this paragraph, including any actions taken to correct significant deficiencies and material weaknesses in the registrant's internal controls and procedures for financial reporting.

Item 6. Exhibits

File the exhibits listed below as part of this Form. Letter or number the exhibits in the sequence indicated.

(a) A copy of the report transmitted to stockholders pursuant to Rule 30e–1 under the Investment Company Act of 1940 (17 CFR 270.30e–1).

(b) Any written code of ethics, or amendment to that code of ethics, that applies to the principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions of the registrant, its investment adviser, or its principal underwriter, subject to disclosure under Item 3.

* * * * *

Certifications*

I, [identify the certifying individual], certify that:

1. I have reviewed this report on Form N–CSR, including exhibits, of [identify registrant];

2. Based on my knowledge, this report, including exhibits, does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, including exhibits, fairly present in all material respects the financial condition, results of operations, changes in net assets, and cash flows (if the financial statements are required to include a statement of cash flows) of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures and internal controls and procedures for financial reporting (as defined in rule 30a–2(c) and (d) under the Investment Company Act of 1940) for the registrant and we have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal controls and procedures for financial reporting, or caused such internal controls and procedures for financial reporting to be designed under our supervision, to provide reasonable assurances that the registrant's financial statements are fairly presented in conformity with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of the end of the period covered by this report (''Evaluation Date'');

(d) Presented in this report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

(e) Disclosed to the registrant's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function):

(i) All significant deficiencies and material weaknesses in the design or operation of internal controls and procedures for financial reporting which could adversely affect the registrant's ability to record, process, summarize, and report financial information required to be disclosed by the registrant in the reports that it files or submits under the Securities Exchange Act of 1934 and the Investment Company Act of 1940, within the time periods specified in the U.S. Securities and Exchange Commission's rules and forms; and

(ii) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls and procedures for financial reporting; and

(f) Indicated in this report any significant changes in the registrant's internal controls and procedures for financial reporting or in other factors that could significantly affect internal controls and procedures for financial reporting made during the period covered by this report, including any actions taken to correct significant deficiencies and material weaknesses in the registrant's internal controls and procedures for financial reporting.

Date: _____

_____

[Signature]

_____

[Title]

* Provide a separate certification for each principal executive officer and principal financial officer of the registrant. See Rule 30a–2 under the Investment Company Act of 1940 (17 CFR 270.30a–2). The required certification must be in the exact form set forth above.

By the Commission.

Dated: October 22, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27302 Filed 10–29–02; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Wednesday,
October 30, 2002

Part III

Environmental Protection Agency

40 CFR Parts 63, 258, et al.

Waste Management System; Testing and Monitoring Activities; Proposed Rule: Methods Innovation Rule; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63, 258, 260, 261, 264, 265, 266, 270, 271, and 279

[FRL–7394–6]

RIN 2050–AE41

Waste Management System; Testing and Monitoring Activities; Proposed Rule: Methods Innovation Rule

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of availability.

SUMMARY: The Environmental Protection Agency (EPA or Agency) proposes to amend a variety of testing and monitoring requirements throughout the Resource Conservation and Recovery Act (RCRA) regulations. We are proposing to allow more flexibility when conducting RCRA-related sampling and analysis, by removing unnecessary required uses of methods found in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' also known as ''SW–846,'' and only retaining the requirement to use SW–846 methods when the method is the only one capable of measuring a particular property (*i.e.*, it is used to measure a required method-defined parameter). This is an important step towards a performance-based measurement system (PBMS), as part of the Agency's efforts towards *Innovating for Better Environmental Results.* Additionally, we are proposing to: withdraw the reactivity method guidelines from SW–846 Chapter Seven; amend the ignitability and corrosivity hazardous waste characteristic regulations by clarifying the use of certain methods; incorporate by reference Update IIIB to SW–846; add Method 25A for analyses conducted in support of certain RCRA air emission standards; and remove a confidence limit requirement for certain feedstream analyses conducted under the National Emission Standards for Hazardous Air Pollutants (NESHAP). In addition, the Agency is announcing the availability of a new guidance document for public comment entitled ''RCRA Waste Sampling Draft Technical Guidance.'' By making this document available for review and comment, it is our intention to provide draft guidance on waste sampling that would be beneficial to the public. These changes should make it easier and more cost effective to comply with affected regulations, without compromising human health or environmental protection.

DATES: Send your comments to reach us on or before December 30, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier. Send an original and two copies of your comments to: OSWER Docket, Environmental Protection Agency, Mailcode: 5305–G, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Attention Docket ID No. RCRA–2002–0025. Follow the detailed instructions as provided in section I.B.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 (toll free) or call (703) 412–9810; or, for hearing impaired, call TDD (800) 553–7672 or TDD (703) 412–3323. For more information on specific aspects of this rulemaking, contact Kim Kirkland, Office of Solid Waste (5307W), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002, (703) 308–8855, e-mail address: *kirkland.kim@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of this Document and Other Related Information?

i. Docket

EPA has established an official public docket for this action under Docket ID No. RCRA–2002–0025. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the OSWER Docket, EPA West Building, Room B102, 1301 Constitution Avenue, NW, Washington DC, 20004. This Docket Facility is open from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–1744. To view docket materials, you should call in advance and make an appointment. You may copy a maximum of 100 pages from any regulatory docket at no charge (unless the documents require copyright permission). Additional copies cost $0.15 per page.

ii. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number. You may also view and download docket information from the Internet at: *http://www.epa.gov/SW–846.*

Certain types of information will not be placed in the EPA public dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. CBI materials will be placed in a separate CBI docket that is not available to the public. Redacted versions of documents containing CBI will be placed in the public dockets. In addition, EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.A. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the

copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or *see* 67 FR 38102, May 31, 2002.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments, but will make every effort to do so if time and resources permit. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in section I.C. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

i. Electronically

If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

1. EPA Docket

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. RCRA–2002–0025. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

2. E-mail

Comments may be sent by electronic mail (e-mail) to *RCRA-docket@epamail.epa.gov,* Attention Docket ID No. RCRA–2002–0025. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

3. Disk or CD ROM

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section I.B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

ii. By Mail

Send an original and two copies of your comments to: OSWER Docket, Environmental Protection Agency, Mailcode: 5305–G, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. RCRA–2002–0025.

iii. By Hand Delivery or Courier

Deliver your comments to: OSWER Docket, EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. RCRA–2002–0025. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.A.1.

iv. By Facsimile

Fax your comments to (703) 603–9234, Attention Docket ID No. RCRA–2002–0025.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: RCRA CBI Document Control Officer, Office of Solid Waste, Environmental Protection Agency, Mailcode 5305–W, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. RCRA–2002–0025. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. How Do I Obtain Copies of SW–846?

Proposed Update IIIB and the Third Edition of SW–846, as amended by Final Updates I, II, IIA, IIB, III, and IIIA will be available in pdf format on the Internet at *http://www.epa.gov/SW–846.* A paper copy of Proposed Update IIIB is also located in the docket for this proposal (*see* **ADDRESSES** above). Table 1 below provides sources for both paper and electronic copies of the Third Edition of SW–846 and all of its updates.

TABLE 1.—SOURCES FOR SW–846, THIRD EDITION, AND ITS UPDATES

Source	Available portions of SW–846
Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402, (202) 512–1800.	—Paper copies of the SW–846, Third Edition, basic manual and of certain updates, including Final Updates I, II, IIA, IIB, III; Draft Update IVA; and Proposed Update IIIB. Subscriber must integrate the updates.
National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605–6000 or (800) 553–6847.	—Paper copy of an integrated version of SW–846, Third Edition, as amended by Final Updates I, II, IIA, IIB, and III.
Internet *http://www.epa.gov/SW–846*	—Individual paper copies of the SW–846, Third Edition, basic manual and of certain updates, including Final Updates I, II, IIA, IIB, III, IIIA; Draft Updates IVA and IVB; and Proposed Update IIIB. —CD–ROM of integrated version of SW–846, Third Edition, as amended by Final Updates I, II, IIA, IIB, and III (pdf and WordPerfect electronic copies). —CD–ROM of Draft Update IVA (pdf and WordPerfect electronic copies). —Integrated version of SW–846, Third Edition, as amended by Final Updates I, II, IIA, IIB, III, and IIIA (pdf electronic copy). —Proposed Update IIIB (pdf electronic copy). —Draft Updates IVA and IVB (pdf electronic copy).

E. What Is the Legal Authority for This Action?

We will promulgate the part 258, 260, 261, 264–266, 270, 271, and 279 regulations under the authority of sections 1006, 2002(a), 3001–3007, 3010, 3013–3018, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (commonly known as RCRA), as amended; and sections 101(37) and 114 of the Comprehensive Emergency Response and Compensation and Liability Act of 1980 (commonly known as CERCLA), as amended. We will promulgate the part 63 regulation under the authority of sections 112 and 114 of the Clean Air Act.

F. What Should I Consider as I Prepare My Comments for EPA?

In developing this proposal, we tried to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide different views on options we propose, new approaches we have not considered, new data, how this rule may effect you, or other relevant information. We welcome your views on all aspects of this proposed rule, but we request comments in particular on comment topics or questions identified within the preamble. Please note however that we are only proposing revisions to small portions of the various RCRA Program regulations and that this proposal does not re-open other parts of those regulations to public comment or judicial review.

Your comments will be most effective if you follow the suggestions below:

- Explain your views as clearly as possible.
- Provide documented technical information and/or cost data to support your views.
- If you estimate potential burden or costs, explain how you arrived at the estimate.
- Tell us which parts you support, as well as those with which you disagree.

sbull; Provide specific examples to illustrate your concerns.

- Offer specific alternatives.
- Refer your comments to specific sections of the proposal, such as the units or page numbers of the preamble, or the regulatory sections.
- Make sure to submit your comments by the deadline in this proposal.
- Be sure to identify the appropriate docket number in the subject line on the first page of your comment. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

We will respond to both written and electronic comments in a document in the **Federal Register** or in a response to comments document placed in the official record for this rulemaking. Please note that, if you send electronic comments, we will not reply electronically unless to obtain clarification of text that may be garbled in transmission or during conversion to paper form.

G. How Is The Rest of this Preamble Organized?

We list below the order of the major preamble sections which explain our proposed action.

II. Summary of Today's Proposed Rule and Covered Entities
III. Background and Purpose of Proposed Action to Reform RCRA-Related Testing and Monitoring
  A. How to Determine if a Method Is Appropriate
  B. Why We Selected the Proposed Approach Over Other Approaches
  C. Potential Impacts from Removal of Required uses of SW–846 Analyses
IV. Proposed Regulatory Revisions Involving Removal of SW–846 Requirements
  A. Removal of Requirements to Use Only SW–846 in § 260.22(d)(1)(i) and Appendix IX to Part 261
  B. Removal of Requirements to Use Only SW–846 Method 8290 in § 261.35(b)(2)(iii)(A) and (B)
  C. Removal of Requirement to Use Only SW–846 in § 261.38(c)(7)
  D. Removal of Requirements to Use Only SW–846 Method 8260 in §§ 264.1034(d)(1)(iii), 264.1063(d)(2), 265.1034(d)(1)(iii), and 265.1063(d)(2)
  E. Removal of Requirements to Use Only SW–846 Methods 8260 and 8270 and Revisions to Listing of Method Options in § 265.1084(a)(3)(iii) and (b)(3)(iii); and Revisions to § 265.1084(a)(3)(ii)(C), (b)(3)(ii)(C), and (c)(3)(i)
  F. Removal of Requirements to Use Only SW–846 in §§ 266.100(d)(1)(ii) and (g)(2), and 266.102(b)(1)
  G. Removal of Requirement to Use Only SW–846 in § 266.106(a)
  H. Removal of Requirements to Use Only SW–846 in § 266.112(b)(1) and (b)(2)(i)
  I. Removal of Requirements to Use Only SW–846 in Sections 1.0, 3.0, 10.3, and 10.6 of Appendix IX to Part 266
  J. Removal of Requirements to Use Only SW–846 Methods in §§ 270.19(c)(1)(iii) and (iv); 270.22(a)(2)(ii)(B); 270.62(b)(2)(i)(C) and (D); and 270.66(c)(2)(i) and (ii)
  K. Removal of SW–846 Methods from Incorporation by Reference in § 260.11(a)(11)
V. Proposed Editorial Corrections to SW–846 References in the RCRA Testing and Monitoring Regulations
VI. Proposed Action to Withdraw Reactivity Interim Guidance from SW–846 Chapter Seven and Remove Required SW–846 Reactivity Analyses and Threshold Levels from Conditional Delistings
VII. Proposed Clarifications to Corrosivity and Ignitability Hazardous Waste Characteristics
  A. Revision to § 261.22(a)(2) to Clarify That SW–846 Method 1110 Is the SW–846 Standardized Version of the NACE Standard Specified for Corrosivity Characteristic Testing

B. Revisions to § 261.21(a)(1) to Update References to ASTM Standards, to Clarify That SW–846 Methods 1010 and 1020 Reference and Use The ASTM Standards Specified for Ignitability Characteristic Testing, and to Remove an Unnecessary Referral to Method Equivalency Petitions; and Revisions to § 260.11(a)(1) and (2) to Include the Updated References
VIII. Availability of Proposed Update IIIB and Invitation for Public Comment on the Update
IX. Proposed Addition of Method 25A to §§ 264.1034(c)(1)(ii) and (iv) and 265.1034(c)(1)(ii) and (iv)
X. Proposed Removal of Requirements from § 63.1208(b)(8)(i) and (ii) in the NESHAP Standards to Demonstrate Feedstream Analytes Are Not Present at Certain Levels
XI. Announcing the Availability of RCRA Waste Sampling Draft Technical Guidance
A. Why Is the Agency Releasing this Guidance?
B. What is Included in the Draft Guidance?
C. Will this Guidance Replace the Existing Chapter Nine of SW–846?
D. Can the Draft Technical Guidance Be Used Now?
E. When Will the Guidance Be Finalized?
F. Request for Comment
XII. State Authorization Procedures
A. Applicability of Federal Rules in Authorized States
B. Authorization of States for Today's Proposal
C. Abbreviated Authorization Procedures
XIII. Administrative Requirements
A. Executive Order 12866
B. Unfunded Mandates Reform Act
C. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq
D. Environmental Justice (Executive Order 12898)
E. Protection of Children from Environmental Risks and Safety Risks (Executive Order 13045)
F. Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)
G. Federalism (Executive Order 13132)
H. National Technology Transfer and Advancement Act of 1995
I. Energy Effects (Executive Order 13211)
J. Paperwork Reduction Act

II. Summary of Today's Proposed Rule and Covered Entities

We, the Environmental Protection Agency (EPA or Agency), propose to amend our hazardous and nonhazardous solid waste regulations for testing and monitoring activities under the Resource Conservation and Recovery Act (RCRA), and to amend a testing requirement in the National Emission Standards for Hazardous Air Pollutants (NESHAP) from hazardous waste combustors. These changes should make it easier and more cost effective for regulated entities to comply with the respective RCRA and NESHAP regulations. Specifically we are proposing to:

1. Reform RCRA-related testing and monitoring by restricting requirements to use SW–846 to only those situations where the method is the only one capable of measuring the property (*i.e.*, it is used to measure a required method-defined parameter). This will allow more flexibility in RCRA-related sampling and analysis by removing unnecessary required uses of SW–846.

2. Withdraw the cyanide and sulfide reactivity guidance from sections 7.3.3 and 7.3.4 of SW–846 Chapter Seven and withdraw required uses of reactive cyanide and sulfide methods and threshold levels from conditional delistings.

3. Amend the regulations for the ignitability and corrosivity hazardous waste characteristics by clarifying the use of certain methods. As part of this, we are clarifying in § 261.22(a)(2) that SW–846 Method 1110, ''Corrosivity Toward Steel,'' is the standardized SW–846 method to determine the characteristic of corrosivity toward steel. We also propose to incorporate by reference revisions of the ASTM methods used for the determination of flash point under the characteristic of ignitability. Specifically, we propose to replace references to ASTM Methods D 3278–78 and D 93–79 or D 93–80 in § 261.21(a)(1) with more current versions of the methods, to be referenced as ASTM Methods D 3278–96 and D 93–99c.

4. Incorporate by reference Update IIIB to SW–846, which includes four revised chapters, including the revised Chapter Seven, and eleven revised methods, including method revisions to remove unnecessary required uses of SW–846 Chapter Nine, ''Sampling Plan,'' and to update references to the aforementioned ASTM methods.

5. Add Method 25A as an analytical option to analyses conducted in support of air emission standards for process vents and/or equipment leaks at treatment, storage, and disposal facilities.

6. Remove a requirement to demonstrate that feedstream analytes are not present at levels above the 80% upper confidence limit above the mean for sources subject to NESHAP: Final Standards for Hazardous Waste Combustors.

This rule does not propose to add any additional requirements to the regulations. Instead, this rule removes certain existing requirements to use SW–846, and it clarifies what the Agency considers to be other appropriate methods. Our goal is to make it easier and more cost effective to comply with the RCRA regulations by allowing more flexibility in method selection and use. If you prefer, you can still use the SW–846 methods referenced in the regulations to demonstrate compliance.

As noted earlier in this preamble, we are only proposing revisions to small portions of the various RCRA Program regulations and this proposal does not re-open other parts of those regulations to public comment or judicial review.

You may be covered by this action if you conduct waste sampling and analysis for RCRA- or NESHAP-related activities. Covered entities include anyone that generates, treats, stores, or disposes of hazardous or nonhazardous solid waste and are subject to RCRA subtitle C or D sampling and analysis requirements; and entities subject to NESHAP final standards for hazardous waste combustors (40 CFR part 63, subpart EEE). All types of industries, governments, and organizations may have entities that generate or manage RCRA-regulated solid wastes and may be subject to RCRA-related sampling and analysis requirements.

To determine whether your facility, company, business organization, etc., is covered by this action, you should carefully examine the applicability criteria in part 63 and in parts 258 through 299 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

III. Background and Purpose of Proposed Action to Reform RCAA-Related Testing and Monitoring

Currently, either our hazardous and nonhazardous solid waste regulations for testing and monitoring activities (sampling and analysis) under RCRA or the permits or waste analysis plans of facilities regulated by RCRA specify the analytes of concern to be determined in a matrix of concern at a particular regulatory level of concern. Additionally, some recently promulgated regulations specify the confidence level of concern. Most RCRA regulations leave the how (*i.e.*, which test method to use) up to you, a member of the regulated community. However, some RCRA regulations require the use of methods from the EPA publication ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' also known as ''SW–846.''

We initially issued SW–846 in 1980 soon after the first RCRA regulations were published. At that time, we intended that SW–846 serve two roles.

First, we intended that it serve as a guidance manual of generally appropriate and reliable analytical methods for RCRA-related testing and monitoring. Second, we intended that it serve as a readily-available source of those few analytical methods which were first required for complying with the RCRA regulations. Over the years, we published regulations that required the use of SW–846 methods in general. Subsequently, members of the regulated public made it clear to EPA that they would like the opportunity to use other reliable methods in compliance with RCRA, and EPA also decided that some of the SW–846 requirements were not necessary.

The requirement to use SW–846 in general (*e.g.*, the delisting regulations at § 260.22) does not identify specific SW–846 methods. These requirements typically include the analyses of many different analytes which can be determined by many different methods. Almost every update to SW–846 includes at least one method that may be applicable to the requirements. Therefore, whenever we update SW–846, we must incorporate by reference the new and revised methods into the RCRA regulations as part of a rulemaking. We have to issue the updates as a proposed rule, request public comment, and then promulgate the update in a final rule. This lengthy process delays the timely use of new analytical technologies.

Also, in order to use a method different from any required SW–846 method, members of the regulated community have to develop and submit an equivalency petition, pursuant to § 260.21. This petition process discourages the timely use of new and innovative methods, and is very rarely used by the public, perhaps because it is time-consuming. When the proposed changes of this rule are implemented, it will not be necessary to submit an equivalency petition in order to use a non-SW–846 method for most sampling and analysis scenarios.

On May 8, 1998 in the **Federal Register** (63 FR 25430), we first announced our intent to remove the unnecessary required uses of SW–846 methods from the RCRA regulations. At that time, we described our reasons for wanting to remove those required uses from the regulations, including our desire to allow more flexibility in method selection and fully implement a performance-based measurement system (PBMS) in the RCRA Program. We also requested public comment on our plan. The public comments were largely favorable, and we therefore decided to proceed with publication of this proposed rule. You may find summaries of the relevant May 8, 1998 **Federal Register** public comments and our responses to those comments in the docket to this proposed rule, docket number RCRA–2002–0025, at the location listed above under **ADDRESSES**.

Therefore, we propose to restrict the requirement to use a specific SW–846 method to only those situations where its particular procedure is the only one that is capable of measuring the property (*i.e.*, a method-defined parameter). For example, to determine compliance with the toxicity characteristic (TC), waste generators must test their waste using SW–846 Method 1311, ''The Toxicity Characteristic Leaching Procedure,'' the TCLP, to determine whether the waste leaching potential is greater than the TC levels specified in § 261.24. The TCLP was developed as a means of simulating the leaching potential of waste material placed in a specific environment. It was the test used to develop the particular regulatory thresholds. No other test is known to yield the same leachate concentrations as Method 1311, the TCLP, and therefore we describe the results obtained from Method 1311 as a required ''method-defined parameter.''

Examples of other SW–846 methods that will remain required for method-defined parameters (MDPs) include Method 9040, ''pH Electrometric Measurement,'' to demonstrate whether a waste exhibits the corrosivity characteristic based on pH levels, and Method 9095, ''Paint Filter Liquids Test,'' to demonstrate the absence or presence of free liquids in wastes managed in RCRA-regulated treatment, storage, and disposal facilities.

You cannot replace or modify a method if the method is for determination of a RCRA-required method-defined parameter (MDP). However, other MDP methods exist which are not required by the RCRA regulations. It may be possible to modify those methods without adverse regulatory or analytical effects.

To summarize, our reasons for restricting required uses of SW–846 to regulated MDPs include:

1. Allowing the regulated community more flexibility in method use during RCRA-required testing.
2. Stimulating the development and timely use of innovative and more cost-effective monitoring technologies and approaches in the RCRA Program.
3. Allowing more efficient and timely releases of SW–846 methods by decoupling most of the methods from required uses on the RCRA regulations.
4. Making the RCRA Program more effective by focusing on measurement objectives rather than on measurement technologies.

A. How To Determine If A Method Is Appropriate

Our proposed revisions to remove required uses of SW–846 methods include language allowing the use of ''appropriate methods such as those found in SW–846 or other reliable sources.'' Such a method might be one published by EPA in a different manual or regulation or published by another government agency, a voluntary standards setting organization, or other well-known sources. We retained mention of the SW–846 methods in the regulations as guidance and examples of methods that could be appropriate.

There are two primary considerations in selecting an appropriate method, as addressed below.

i. Appropriate Methods Are Reliable and Accepted as Such in the Scientific Community

Methods published by the Agency or other government entities use techniques that have documented reliability and are generally accepted by the scientific community. SW–846 methods are reviewed by a technical workgroup composed of national expert-level chemists who provide peer input and determine whether method reliability is sufficiently documented. The technical reliability and acceptance of methods published by other governmental or non-governmental organizations may also be documented, especially if the methods are subjected to some form of objective scientific review.

ii. Appropriate Methods Generate Effective Data

Effective data are data of sufficiently known and appropriate quality to be used during project-specific decisions. An example of such a decision is whether a particular waste is hazardous because a constituent of concern is present above a level of concern. Before sampling and analysis begins, project planners should identify why the analysis is being done, how the data will be used, and how ''good'' the data has to be (*e.g.*, the DQOs). Effective data meet any data quality objectives (DQOs) set by the project planners for the specific project. These objectives (further described below) should be rationally and systematically identified during the planning of the project and development of the project-specific Quality Assurance Project Plan (QAPP), Waste Analysis Plan (WAP), or Sampling and Analysis Plan (SAP). Sampling and analysis documentation

should be sufficient to confirm that the data are effective.

Data quality objectives or DQOs generally refer to the necessary quality of the overall decision to be made or, in other words, the tolerable error (*i.e.*, acceptable level of uncertainty for the decision). For example, a DQO for waste analysis may be that one must demonstrate that an analyte is not present above the reported level at the 80 percent upper confidence around the mean, and that the method could have detected the presence of the analyte at that level and confidence limit. A DQO may be specified in a regulation, a permit, a corrective action agreement, or other regulatory or enforcement document. Sometimes you must consider a DQO regulatory specification when selecting an appropriate method. For example, the RCRA comparable fuels' provisions include DQOs in lieu of naming the use of specific methods (see 63 FR 33781, June 19, 1998). You can find guidance on the development of DQOs in EPA's ''Guidance for the Data Quality Objectives Process'' (EPA QA/G–4) found at EPA's Quality Staff's Web site (*http://www.epa.gov/quality/*), in Chapter One, ''Quality Control,'' of SW–846, and in ASTM D 5792, ''Standard Practice for Generation of Environmental Data Related to Waste Management Activities: Development of Data Quality Objectives.''

You should identify the types of quality control (QC) concepts (*e.g.*, spike recovery analyses, blanks, etc.) you will use to determine if you meet your objectives. For example, selection of an appropriate method is sometimes demonstrated by adequate recovery of spiked or surrogate analytes and reproducible results, or through successful analysis of a standard reference material of a matrix-type analogous to that of the actual sample matrix. The method may not be appropriate for its intended use if your data show inadequate recovery of an analyte at a level that impairs a decision regarding whether the analyte is present at or below its regulatory level. Such a method would not generate effective data. Based on your QC data, you should determine whether the method generates results that are sufficiently sensitive, unbiased, and precise to demonstrate compliance with the subject regulation.

However, you should not focus only on controlling or documenting analytical quality, because regulatory decisions are also susceptible to error due to sampling procedures. If the contaminant variability is not properly addressed during the planning and collection of samples, an incorrect decision could be reached even though the method performed well in terms of laboratory quality control. No matter how accurate or precise the laboratory analysis, the data will provide misleading information if excessive error is introduced by improper sampling procedures. Guidance on identifying the necessary quality control procedures and on minimizing the potential for both analytical and sampling error can be found at the EPA Quality Staff's Web site (*http://www.epa.gov/quality/*) or in Chapters One, Two, and Nine of SW–846, and in some methods.

Finally, you should identify appropriate methods for a specific project before sampling and analysis begins. As the regulated entity, you are ultimately responsible for compliance with a particular regulation. Therefore, you should not rely on the laboratory or other project participant to select an appropriate method. We recommend that you consult with your regulating authority during identification of performance goals and the selection of appropriate methods.

iii. Request for Public Comments on Appropriate Method Selection and Use

We are interested in public comments regarding the selection and use of other appropriate methods in the RCRA regulations, as described above. We are particularly interested in responses to the following questions:

1. What concerns exist regarding the selection of appropriate methods by the regulated community?

2. What other guidance is needed to aid in the selection of appropriate methods by the regulated community?

B. Why We Selected the Proposed Approach Over Other Approaches

We considered several approaches to promoting method use flexibility in the RCRA regulations. We selected the ''appropriate method'' approach because it is universally applicable to the subject RCRA regulations. It also requires only minimal revisions to the regulations for implementation.

In addition, the option to use ''appropriate methods'' is not new to the RCRA regulations. For example, use of the TCLP, SW–846 Method 1311, is required for determinations regarding whether a waste is hazardous for the toxicity characteristic (the TC). It generates an extract (the leachate) which is subjected to determinative analysis for comparison with the TC regulatory limits. However, the TCLP procedure does not require specific methods for the leachate determinative analysis, nor does it specify the use of even SW–846 methods in general for the analysis. It allows method flexibility similar to that proposed by this rule by stating in its sec. 7.2.14: ''The TCLP extract shall be prepared and analyzed according to appropriate analytical methods.''

Before finalizing this rule, we would like the public's opinion of the alternative approaches that we considered, as described below. Please provide specific reasons for your positions regarding the alternative approaches, including perceived advantages or disadvantages.

1. As a variation to the ''appropriate method'' approach described above, should we remove mention of SW–846 methods as examples of appropriate methods from the subject regulations? We are interested in whether retaining mention of the SW–846 methods offers significant advantages or disadvantages. (For example, one disadvantage could be that it might leave an incorrect impression that the SW–846 methods are still preferred by EPA).

2. In lieu of the ''appropriate method'' approach, should we instead add performance criteria to each regulation, such as done in the aforementioned comparable fuel rulemaking, and not mention or require the use of an appropriate method (including any SW–846 methods)? We did not select this approach because it might not be directly applicable to some regulations and then might require significant regulatory changes with greater impacts.

C. Potential Impacts From Removal of Required Uses of SW–846 Analyses

If the regulatory revisions of this proposed rule are promulgated, you can use any appropriate analytical test method in demonstrating compliance with the RCRA regulations, except for those demonstrations involving required method-defined parameters. For the reasons given in this section, we believe that this action will not significantly or adversely impact the regulated community or other potentially affected parties. In fact, the primary impact of this rule if adopted will be to result in better analytical results and lower costs. All of the entities involved with the task of waste characterization will pay far greater attention to method performance. In addition, project planners and laboratories will be able to identify methods that are potentially less costly to the regulated community.

i. Expected Impact on Regulated Entities

The use of other appropriate methods will be an option, not a requirement. Regulated entities may continue to use the specified SW–846 methods to demonstrate compliance and thus

experience no impact from this rulemaking. EPA will also continue to publish and update SW–846 methods and ensure their scientific soundness by following peer review guidelines and requesting public comment on the methods through **Federal Register** notices.

We primarily believe that an entity will choose to use another appropriate method from that listed in the regulations *only* when it is beneficial to do so. Method choice will be based on expected efficiencies in cost and performance. For example, you may use methods that are more appropriate for your particular matrix, and cut the cost of using unnecessary standards.

Also, a demonstration that another method is appropriate is not new to RCRA-related sampling and analysis and will not involve much more than what regulated entities already should be doing. For example, you should already be setting method performance goals in your Quality Assurance Project Plan (QAPP) or Sampling and Analysis Plan (SAP), and evaluating compliance with them based on QC data or other data quality indicators.

Some public comments in response to our notice of May 8, 1998, expressed concern regarding the comparability of data generated by different methods for the same purpose. First, this issue is not new, because some regulations already allow the use of more than one method. We also disagree that this should be a concern, provided that any alternative method is also an appropriate method as defined above. Specifically, if both methods generate effective data and meet the same performance goals of the project, then data from both methods are comparable. This has always been EPA's approach in comparing data by different methods, and it is not affected or changed by this proposal.

As a stakeholder, you may prefer a more prescriptive approach in the regulations because method-specific requirements remove the burden of method-selection decision making. You may believe that this translates into lower costs and better compatibility within a workforce of permit writers and other project participants who may not have method-selection expertise. We are familiar with this argument and would like to better understand its perspective. However, we believe that many method-selection decisions should be project specific and thus, when such an approach is applicable, specific methods should not be required in the regulations. Even before this proposed rulemaking, project planners and other participants should be evaluating the effectiveness of methods during facility or waste evaluations.

You also may be concerned about the impact of this proposal on existing RCRA permits. RCRA permits are typically effective up to ten years. This proposal, if finalized, would only effect new or reissued permits, and only as an option for flexibility in method selection. Therefore, RCRA permits need not be adversely impacted by this action.

Finally, this rule does not propose new information collection or reporting requirements for regulated entities. Sections 260.22(i) (reporting requirements for petitions to exclude wastes) and 264.13(b) and 265.13(b) (reporting requirements for owners and operators of hazardous waste management facilities) provide sufficient reporting requirements to cover RCRA-related testing and analysis documentation regarding the use of other appropriate methods.

ii. Expected Impact on States

Many of the public comments in response to our May 8, 1998, notice favored State adoption of these revisions, but were concerned that this action will impose additional burden on States. In response, we note that the regulatory changes in this rule are equivalent to or less stringent than the existing Federal regulations which they amend. Therefore, authorized States are not required to adopt and seek authorization for this rulemaking. Nevertheless, we encourage the adoption of these or similar revisions by authorized States in order to promote national adoption of PBMS. In addition, if States choose to adopt these revisions, the impact will not be significant since they already conduct method selection and data quality reviews to determine compliance with their testing and monitoring regulations.

iii. Education Efforts by EPA To Facilitate Implementation

Many public comments received on our May 8, 1998 notice expressed a need for communication and training, at all levels, to minimize any adverse impacts and promote implementation. Therefore, we plan to educate and train the States, EPA Regions, and the regulated community regarding the implementation of this rule, through such mechanisms as web and internet training modules, workshops, and fact sheets. Over the past six years, we have offered program-specific training (*e.g.*, ''Analytical Strategy for the RCRA Program: A Performance-Based Approach'') for EPA Headquarters, Regional, and State personnel involved in RCRA activities that include sampling and analysis. We plan to offer other courses on the evaluation of data and permit writing from a PBMS and effective data standpoint. In addition, we encourage affected entities to contact the Methods Information Communication Service (MICE Service, see **ADDRESSES**) for answers to any questions or concerns regarding the use of other appropriate methods. These communication and training efforts will help ensure consistency in implementation of this rule by the States, Regions, and regulated community and help limit any associated costs.

iv. Request for Public Comment on Impacts and Implementation

We request public comment on the impact of this proposed rule and how we might promote its successful implementation. We are particularly interested in public comment to the following questions:

1. What can we do to remove implementation barriers and maximize the benefits from the flexibility provided by this action?
2. What might be the economic impact on the regulated community and other entities as a direct result of this action?
3. What concerns exist regarding implementation and compliance assessments involving the use of other appropriate methods?
4. Are there any technical or programmatic barriers to the implementation of this approach?
5. What guidance or training is needed to assure successful implementation of this action?
6. What new or uncommon data quality problems might be caused by allowing increased flexibility in method selection?

IV. Proposed Regulatory Revisions Involving Removal of SW–846 Requirements

Sections IV.A through IV.J address revisions to remove the requirement to use only SW–846 methods and add the flexibility to use other appropriate methods. The overall basis for these revisions is explained in section II above.

Table 2—lists the proposed revisions for each regulation to remove SW–846 requirements and allow the flexibility to use other appropriate methods. It also lists the preamble section which describes the revisions. As addressed by section IV.K, we also propose to revise the incorporation by reference of SW–846 in § 260.11 so that it only includes SW–846 methods required for method-

defined parameters. Therefore, for each section where we propose to remove the requirement to use only SW–846 methods, we propose to also remove the SW–846 incorporation by reference.

TABLE 2. REVISIONS TO RCRA REGULATIONS TO REMOVE REQUIRED USES OF SW–846 METHODS

Revised regulation	Affected topic or program	Preamble section
§ 260.22(d)(1)(i)	Delisting	IV.A
Appendix IX to part 261	Delisting	IV.A
§§ 261.35(b)(2) (iii)(A) and (B)	Deletion of certain waste codes following equipment cleaning	IV.B
§ 261.38(c)(7)	Comparable/syngas fuel exclusion	IV.C
§§ 264.1034(d)(1) (iii), 264.1063(d) (2), 265.1034(d)(1) (iii), and 265.1063(d)(2).	Air emission standards for process vents and equipment leaks	IV.D
§§ 265.1084(a)(3) (iii) and (b)(3) tanks, (iii), and 265.1084(a)(3)(ii) (C), (b)(3)(ii)(C), and (c)(3)(i).	Air emission control requirements for surface impoundments, and containers.	IV.E
§§ 266.100(d)(1) (ii) and (g)(2), and 266.102(b)(1)	Hazardous wastes burned in boilers and industrial furnaces (BIFs).	IV.F
§ 266.106(a)	Control of metal emissions at BIFs	IV.G
§§ 266.112(b)(1) and (b)(2)(i)	Residues from burning of wastes in BIFs	IV.H
Appendix IX, part 266	Methods Manual for BIF regulations	IV.I
§§ 270.19(c)(1) (iii) and (iv), 270.22(a)(2)(ii)(B), 270.62(b)(2)(i)(C) and (D), 270.66(c) (2)(i)and (ii).	Part B information and trial burn plan requirements for incinerators and BIFs.	IV.J

We request comment on each of the revisions, particularly in response to the following questions:

1. Does the revision provide adequate flexibility in method selection to facilitate the use of new technologies and encourage a greater focus on the performance of monitoring programs during compliance with the regulation?
2. What are the perceived technical and programmatic barriers to implementing the revision?
3. What is the economic impact of the revision?
4. What guidance or training is needed to aid implementation of the revised regulation?

A. Removal of Requirements To Use Only SW–846 in § 260.22(d)(1)(i) and Appendix IX to Part 261

Section 260.22(d)(1)(i) currently states that SW–846 methods must be used as part of a petition to amend part 261 to exclude (''delist'') a waste listed with code ''T''. We believe that the mandatory use of only SW–846 methods for this aspect of a delisting demonstration is not necessary. Therefore, we are proposing to revise § 260.22(d)(1)(i) by removing the requirement to use only SW–846 methods, deleting the incorporation by reference referral to § 260.11, and explicitly allowing the use of appropriate methods from other reliable sources. With this revision, if you submit a delisting petition, you will no longer be required to use only SW–846 methods. We also strongly recommend that you work with your regulating entity (*e.g.*, EPA Region or authorized State) during selection of methods for a delisting demonstration. In this instance, the methods are not being used as required method-defined parameters. (Note: We are not proposing revisions to § 260.22(d)(3) of the delisting petition regulations which address the use of methods for determining whether wastes are characteristic hazardous wastes.)

We also propose to revise certain conditional delistings (hazardous waste exclusions) in appendix IX, to Part 261 ''Wastes Excluded Under §§ 260.20 and 260.22.'' We are revising the delistings to allow the use of appropriate methods besides SW–846 methods during the required waste analysis.

In most cases, we are including the following language in the conditional delistings: ''Analyses must be performed according to appropriate methods such as methods found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in § 260.11, which must be used without substitution).'' With this language, if you are an owner/operator of the facility, you will have the option to use appropriate methods from other reliable sources besides SW–846.

Some conditional delistings require the use of Methods 9010 (''Total and Amenable Cyanide: Distillation'') and 9012 (''Total and Amenable Cyanide (Automated Colorimetric, with Off-line Distillation''). These methods, although proposed to be retained in § 260.11(a)(11) as method-defined parameters because of their required use under § 268.44, the universal treatment standards under the land disposal restrictions regulations are not being used in those delistings for that purpose. Therefore, we believe the facilities should be allowed to use another appropriate method, if they choose to do so.

Specifically, we propose to revise the conditional exclusions found in Table 1 of appendix IX of part 261 for the following facilities (listed in order of appearance):

—Aptus, Inc., Coffeyville, Kansas
—Arkansas Department of Pollution Control and Ecology, Vertac Superfund site, Jacksonville, Arkansas
—BMW Manufacturing Corporation, Greer, South Carolina
—Bethlehem Steel Corporation, Sparrows Point, Maryland
—DuraTherm, Inc., San Leon, Texas
—Eastern Chemical Company, Longview, Texas
—Envirite of York, Pennsylvania
—Geological Reclamation Operations and Systems, Inc., Morrisville, Pennsylvania
—McDonnell Douglas Corporation, Tulsa, Oklahoma
—Occidental Chemical, Ingleside, Texas
—Rhodia, Houston, Texas
—Syntex Agribusiness, Springfield, Missouri
—Texas Eastman, Longview, Texas
—Tyco Printed Circuit Group, Melbourne, FL

We also propose to revise, as described above, the conditional exclusions found in Table 2 of appendix IX of part 261 for the following facilities (listed in order of appearance):

—Bethlehem Steel Corporation, Steelton, Pennsylvania
—Bethlehem Steel Corporation, Johnstown, Pennsylvania
—BF Goodrich Intermediates Company, Inc., Calvert City, Kentucky
—CF&I Steel Corporation, Pueblo, Colorado
—Chaparrel Steel Midlothian L.P., Midlothian, Texas
—Conversion System, Inc., Horsham, Pennsylvania
—DOE–RL, Richland, Washington
—Envirite, York, Pennsylvania
—Marathon Oil Co., Texas City, Texas

—Occidental Chemical Corporation, Muscle Shoals Plant, Sheffield, Alabama
—Occidental Chemical Corporation, Delaware City, Delaware
—Oxy Vinyls, Deer Park, Texas
—Roanoke Electric Steel Corporation, Roanoke, Virginia
—USX Steel Corporation, USS Division, Southworks Plant, Gary Works, Chicago, Illinois

B. Removal of Requirements To Use Only SW–846 Method 8290 in § 261.35(b)(2)(iii)(A) and (B)

Section 261.35(b)(2)(iii) addresses the testing of rinses from equipment cleaning when generators are demonstrating that certain wastes from wood preserving processes do not meet the listing definition of hazardous waste code F032 (wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use chlorophenolic formulations). Paragraph (A) of the section currently includes a requirement to use SW–846 Method 8290, ''Polychlorinated Dibenzodioxins (PCDDs) and Polychlorinated Dibenzofurans (PCDFs) by High-resolution Gas Chromatography/High-resolution Mass Spectrometry.'' The testing of PCDDs and PCDFs using this method does not involve a method-defined parameter. Therefore, we believe that appropriate methods from other reliable sources should be allowed for this determination. In addition, paragraph (B) of § 261.35(b)(2)(iii) defines criteria for ''not detected'' values based on information found in SW–846 Method 8290. We propose that other appropriate methods should be allowed if they meet those criteria. If you are a generator subject to these regulations, you will still be required to test for PCDDs and PCDFs. However, you will have flexibility in method selection and can consider the use of other methods besides SW–846 Method 8290.

C. Removal of Requirement to Use Only SW–846 in § 261.38(c)(7)

Section 261.38(c)(7) addresses a demonstration for the exclusion of a waste that meets comparable/syngas fuel specifications. The section states that, as the waste generator, you ''shall'' develop and follow a plan for the sampling and analysis of the waste, and that the plan ''shall'' be developed in accordance with SW–846. We propose to revise this section by replacing the second ''shall'' with ''should'' and allow the use of other sampling and analysis guidance, besides that found in SW–846, during waste analysis plan development, provided the other guidance is appropriate for your demonstration. In this case, other guidance will be appropriate if it addresses procedures needed to meet your sampling and analysis performance goals.

D. Removal of Requirements To Use Only SW–846 Method 8260 in §§ 264.1034(d)(1)(iii), 264.1063(d)(2), 265.1034(d)(1)(iii), and 265.1063(d)(2)

Sections 264.1034(d)(1)(iii), 264.1063(d)(2), 265.1034(d)(1)(iii), and 265.1063(d)(2) collectively provide test methods and procedures applicable to the air emission standards for process vents and/or equipment leaks at treatment, storage, and disposal facilities (TSDFs). SW–846 Method 9060, ''Total Organic Carbon,'' and SW–846 Method 8260, ''Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry,'' are required for the determination of total organic carbon (TOC). Method 9060 is used to directly determine TOC, and thus is used for determination of a method-defined parameter. If the conditions under which organic carbon is converted to carbon dioxide are altered, there is a significant potential that a smaller or greater fraction of the carbonaceous material will be converted. Method 8260 is used to determine the individual analytes that may be components of the TOC. This use of Method 8260 is not for a method-defined parameter.

Therefore, we propose to revise these sections to allow the use of appropriate methods from other reliable sources in lieu of SW–846 Method 8260. If you are a facility owner/operator subject to these regulations, you will still be required to determine the TOC content in your waste. However, if you choose not to directly determine TOC by Method 9060, you will be able to consider the use of appropriate methods other than Method 8260 for the determination of individual analytes.

Also, if this rule is finalized, Method 8260 will no longer be incorporated by reference since it will not be solely required by any RCRA regulation. Therefore, we also propose to move the phrase ''(incorporated by reference under § 260.11)'' from after Method 8260 to after Method 9060. This revision will correctly indicate which method remains incorporated by reference.

E. Removal of Requirements To Use Only SW–846 Methods 8260 and 8270 and Revisions to Listing of Method Options in §§ 265.1084(a)(3)(iii) and (b)(3)(iii); and Revisions to §§ 265.1084(a)(3)(ii)(C), (b)(3)(ii)(C), and (c)(3)(i)

Sections 264.1083 and 265.1084 address the waste determination procedures for the subpart CC air emission control requirements for tanks, surface impoundments, and containers. Section 265.1084 addresses the requirements for interim status treatment, storage, and disposal facilities (facilities that existed at the time that the regulations were established and which needed time to fully comply with the regulations) and provides the details for such procedures. Section 264.1083 addresses the requirements for treatment, storage and disposal facilities which were constructed after the regulations were promulgated and directly references the regulations in § 265.1084. The Agency fully explained the basis and history of the waste determination procedures in these regulations. (*See* 59 FR 62915, December 6, 1994; 61 FR 4906, February 9, 1996; 61 FR 59942, November 25, 1996; 62 FR 64646, December 8, 1997; and 64 FR 3384, January 21, 1999.)

One purpose for waste determination under these regulations is to determine if a unit is exempt from the air emission control requirements. One way that a unit can be exempt from the subpart CC requirements is if it manages a hazardous waste with an average volatile organic (VO) concentration less than 500 parts per million by weight (ppmw). As the owner or operator of the waste management facility, you can make a direct determination of the VO concentration using waste analysis. For the purpose of such a waste determination, you must evaluate the mass of all VO constituents in the waste that have a Henry's Law value greater than or equal to 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X), which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3 at 25 degrees Celsius. The compounds exceeding these levels are the constituents (analytes) of concern for this determination. (The Henry's Law constant of a compound is one way that is commonly used to predict the potential of a compound to volatilize.)

Sections 265.1084(a)(3)(iii) and (b)(3)(iii) specify the analytical methods that you must use to determine the VO concentration. The list includes Method 25D (''Determination of the Volatile Organic Content of Waste Samples'')

found in 40 CFR part 60, appendix A; Methods 624 (''Purgeables''), 625 (''Base Neutrals and Acids''), 1624 (''Volatile Organics by Isotope Dilution GC/MS''), and 1625 (''Semivolatile Organics by Isotope Dilution GC/MS'') found in 40 CFR part 136, appendix A; and Methods 8260 (''Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry'') and 8270 (''Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry'') found in SW–846. SW–846 Methods 8260 and 8270 are listed in § 265.1084(a)(3)(iii)(F) and (G) and (b)(3)(iii)(F) and (G).

Method 25D is a nonspecific determinative procedure that provides a total volatile organic concentration. The other methods listed in the subject regulation are analyte-specific determinative procedures. These methods are not being used for method-defined parameters. We originally offered the analyte-specific methods as alternatives to Method 25D in response to public comments regarding the aggressiveness, expense, and repeatability of Method 25D. We added those methods and related conditions for their use so that you would have a range of practical and affordable method options.

However, for consistency with the intent and purpose of this proposed rule, we propose to remove from §§ 265.1084(a)(3)(iii) and (b)(3)(iii) text related to the listing of Methods 624, 625, 1624, 1625, 8260, and 8270 as alternative methods to Method 25D, and add language allowing the use of other appropriate methods from other reliable sources and give Methods 624, 625, 1624, 1625, 8260 and 8270 as examples of such methods. We give our reasons for each revision in the paragraphs to follow.

We are removing the listing of Methods 624, 625, 1624, 1625, 8260 and 8270 as method options because, given the addition of the phrase ''or other appropriate methods,'' a listing of these methods is unnecessary. We have retained them as examples of appropriate methods because they cover many of the analytes of interest, and are approved methods for RCRA-related analyses. By making this change, we are still abiding by our original intent to include methods in the regulations as options to Method 25D. We are not revising that intent; we are only revising how it is expressed in the regulations. This was the original intent of the language added to § 265.1084 in response to public comments.

As an owner or operator subject to these regulations, you will have the flexibility to use one or more different methods, provided that the methods are appropriate for the determination. The target analyte lists of Methods 8260 and 8270 might not cover all organic compounds with a Henry's Law constant equal to or greater than 0.1 Y/X (which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3 at 25 degrees Celsius) of concern in a given hazardous waste, and other appropriate methods may be necessary to complete the analysis. On the other hand, you may know that your waste contains only a few analytes of concern and a method with a smaller analyte list is more appropriate.

In addition to the above, we propose to correct language in other paragraphs of § 265.1084. First, § 265.1084(a)(3)(ii)(C), (b)(3)(ii)(C), and (c)(3)(i) currently state that an example of an acceptable sampling plan includes a plan incorporating the sampling requirements specified in SW–846. We propose to revise these sections to make it clear that the sampling procedures found in SW–846 are not requirements. We intend that information in SW–846 regarding sampling be only used as guidance. We are not removing the requirements to prepare and maintain an acceptable sampling plan and one which includes the requirements contained in Method 25D.

Second, we propose to remove the incorporation by reference for SW–846 in § 265.1084(a)(3)(ii)(C), (a)(3)(iii), (b)(3)(ii)(C), (b)(3)(iii), and (c)(3)(i) since only required methods for the analysis of method-defined parameters will be retained in § 260.11 should this proposal be finalized, and SW–846 sampling procedures will not be required for compliance with any regulation under RCRA.

F. Removal of Requirements To Use Only SW–846 in §§ 266.100(d)(1)(ii) and (g)(2), and 266.102(b)(1)

Part 266, subpart H, addresses the standards for the management of hazardous wastes burned in boilers and industrial furnaces (BIFs). Sections 266.100(d)(1)(ii) and (g)(2) currently require the use of SW–846 methods ''or alternative methods that meet or exceed the SW–846 method performance,'' when sampling and analyzing feedstocks for a conditional exemption for smelting, melting, and refining furnaces that burn hazardous waste solely for legitimate recovery. Section 266.102(b)(1) contains the same language regarding waste analysis in support of permits. When we finalized this regulation, we added the use of ''alternative methods'' in response to concerns that SW–846 method detection limits cannot be achieved when analyzing certain feedstream matrices (*see* 56 FR 42504, August 27, 1991). The subject rule noted that we could reject the use of an alternative method because it may not meet or exceed the performance capabilities of the SW–846 methods or the recommended methods.

In this instance, the SW–846 methods are not being used for method-defined parameters. Therefore, we propose to remove from §§ 266.100(d)(1)(ii) and (g)(2) and 266.102(b)(1) the phrase regarding alternative methods and add language allowing the use of ''appropriate'' procedures from other reliable sources. This change will explicitly allow the use of other appropriate methods and maintain consistency in our language throughout the RCRA regulations regarding the use of other methods. The broad, conforming changes that we are proposing to make throughout the regulations are essentially similar to what is included here. While we are changing specific language here, we are not changing the original intent of the regulation. In fact, we are proposing to use the original intent of this regulation throughout the other RCRA regulations, when applicable.

G. Removal of Requirement To Use Only SW–846 in § 266.106(a)

Section 266.106 provides the standards to control emissions of metals at BIFs. Paragraph (a) of this section states that the owner/operators must comply with the standards for any listed metal of concern that is present at detectable levels using SW–846 methods. The listed metals of concern include antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, thallium, and silver. In this instance, the SW–846 methods are not being used for the analysis of method-defined parameters and their required use is not necessary. Therefore, we propose to revise this section by removing the requirement to use only SW–846 methods, deleting the reference to § 260.11, and explicitly allowing the use of other appropriate methods.

H. Removal of Requirements To Use Only SW–846 in § 266.112(b)(1) and (b)(2)(i)

Section 266.112 of the BIF regulations addresses the regulation of residues resulting from the burning or processing of hazardous wastes in BIFs. Paragraph (b)(1) provides testing requirements for the exclusion of such residues based on comparison of appendix VIII, part 261, constituents in a waste-derived residue to those in a normal residue. It states that sampling and analysis must be in conformance with the procedures of

SW–846. The section does not specify the use of any SW–846 methods for method-defined parameters. In addition, the preamble to the Hazardous Waste Combustion Maximum Achievable Control Technologies (MACT) rulemaking of September 30, 1999 (64 FR 52828) stated that EPA does not require the use of SW–846 methods for the analysis of feedstreams in order to be consistent with a move toward PBMS. Therefore, we propose to remove the requirement to use only SW–846 procedures during the BIF residue exclusion demonstration, to delete the reference to § 260.11, and to explicitly allow the use of other appropriate methods. If you are an owner/operator subject to this regulation, and you select this option, you will still be required to determine if the residue contains appendix VIII constituents. However, you will have more flexibility in the selection of a method for the determination.

In addition, § 266.112(b)(2)(i) requires the use of only SW–846 procedures during a residue exclusion demonstration based on a comparison of non-metal constituent concentrations in the waste-derived residue with health-based limits provided in appendix VII to part 266. Under this section, the testing of the residue does not involve a method-defined parameter and the required use of only SW–846 methods is not necessary. We propose to revise this section by removing the required use of only SW–846 procedures and explicitly allowing the use of other appropriate methods. If you are an owner/operator subject to this regulation, and you select this option, you will still be required to compare levels of non-metal constituents with the health-based limits of appendix VII. However, you will have more flexibility in the selection of a method for the determination. We are not revising § 266.112(b)(2)(ii), which will continue to require the use of the TCLP for the leaching of metal constituents during the residue exclusion demonstration under § 266.112(b)(2).

I. Removal of Requirements To Use Only SW–846 in Sections 1.0, 3.0, 10.3, and 10.6 of Appendix IX to Part 266

Appendix IX to part 266 contains the methods manual for compliance with the BIF regulations. The last paragraph of section 1.0, ''Introduction,'' currently identifies all SW–846 methods to the BIF manual as required procedures for determining compliance with the BIF regulations. The section text does not specifically reference the method numbers; instead it only refers to the methods of SW–846 in general. However, not all of the SW–846 methods for BIF-related analysis are used for method-defined parameters. Therefore, we propose to revise the last paragraph of section 1.0 to explicitly list those SW–846 methods used for method-defined parameters in BIF-related analyses (*i.e.*, air sampling) and which cannot be substituted with other methods. Those methods will remain required for BIF-related analyses, if this proposal is finalized. These methods include air sampling Methods 0011 (''Sampling for Selected Aldehyde and Ketone Emissions from Stationary Sources''), 0023 (''Sampling Method for Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofuran Emissions from Stationary Sources''), 0050 (''Isokinetic HCl/Cl_2 Emission Sampling Train''), 0051 (''Midget Impinger HCl/Cl_2 Emission Sampling Train''), 0060 (''Determination of Metals in Stack Emissions''), and 0061 (''Determination of Hexavalent Chromium Emissions from Stationary Sources'').

The following two methods are those BIF methods which do not involve method-defined parameters and which can be substituted with other appropriate methods for BIF-related analyses: SW–846 Method 9057, ''Determination of Chloride from HCl/Cl_2 Emission Sampling Train (Methods 0050 and 0051) by Anion Chromatography,'' and Method 8315, ''Determination of Carbonyl Compounds by High Performance Liquid Chromatography (HPLC).'' We propose to add sentences to the last paragraph of section 1.0 of appendix IX to part 266 that allows the use of appropriate methods from other reliable sources for these determinations.

[Note: Methods 0050 and 0051, referenced in the title of Method 9057, describe the collection of stack gas emission samples for subsequent determinative analysis of hydrogen chloride and chlorine. Method 9057, an ion chromatography method, is typically used in the determinative analysis of chloride from the samples generated by those methods. During use of Methods 0050 and 0051, Cl- ions are collected in separate solutions for subsequent determinative analysis (*e.g.*, using Method 9057). Methods 0050 and 0051 remain required methods for a method-defined parameter because a change in their sampling procedures (*e.g.*, a change in the nature of the solutions submitted for determinative analysis) could result in different results by the determinative method. However, it is not necessary to exclusively require Method 9057 for the chloride determination because, when appropriate, other determinative methods besides Method 9057 may be used for that determination.]

Given the above, we also propose to revise the ''Note'' of section 3.0, ''Sampling and Analytical Methods,'' to reflect that the complete SW–846 manual will no longer be incorporated by reference as a source of required methods for BIF-related analyses.

Section 10.3, ''Basis,'' addresses the determination of metal concentrations during BIF-related analyses. Paragraph (2) of this section references SW–846, as incorporated by reference, as the source for methods for the determinations. Methods for such determinations are not used for method-defined parameters. Therefore, we propose to revise the section so that other appropriate methods can be used, and remove the indication that these SW–846 methods are incorporated by reference.

Finally, the fourth bullet of paragraph (5) of section 10.6, ''Precompliance Procedures,'' indicates that daily sample composites must be prepared according to SW–846 procedures. We propose to revise this bullet to allow other appropriate procedures and reflect the intent that SW–846 sampling procedures only be used as guidance.

J. Removal of Requirements To Use Only SW–846 Methods in §§ 270.19(c)(1)(iii) and (iv); 270.22(a)(2)(ii)(B); 270.62(b)(2)(i)(C) and (D); and 270.66(c)(2)(i) and (ii)

Section 270.19 describes the part B information requirements for incinerators. Paragraph (c)(1)(iii) of that section states that, when submitting information in lieu of a trial burn, the applicant must identify any hazardous constituents listed in appendix VIII of part 261 that are present in the waste by using SW–846. Sections 270.62(b)(2)(i)(C) and (D) and 270.66(c)(2)(i) and (ii) provide the same requirements for the trial burn plans submitted by hazardous waste incinerator and BIF permit applicants.

In addition, § 270.22 provides specific part B information requirements for BIFs. Paragraph (a)(2)(ii)(B) of that section states that, when seeking to permit BIFs that burn low risk wastes to waive the DRE trial burn, owner/operators must submit results using SW–846 analytical techniques documenting the concentrations of the nonmetal compounds of appendix VIII of part 261.

Each of the above sections include requirements to use only SW–846 methods during the analyses of appendix VIII, part 261, constituents. These analyses do not involve the use of SW–846 methods for method-defined

parameters. We propose to remove these requirements, to delete the references to § 260.11, and to explicitly allow the use of appropriate methods from other reliable sources. If you are an applicant, you will still be required to conduct analyses for the appendix VIII constituents of concern. However, you will have flexibility in the selection of an appropriate method.

K. Removal of SW–846 Methods From Incorporation by Reference in § 260.11(a)(11)

Currently, all methods of SW–846 are incorporated by reference at § 260.11(a)(11) ''when used'' within the RCRA regulations. All of SW–846 had to be incorporated by reference because some RCRA regulations require in general any SW–846 method (*e.g.,* the delisting regulations). The required methods had to be incorporated by reference because they are too lengthy for publishing directly in the regulations and they are readily available to the public in the SW–846 manual. In this rule, we propose to restrict required uses of SW–846 methods for the analysis of method-defined parameters. Therefore, we propose to revise § 260.11(a)(11) to remove the incorporation by reference of all SW–846 methods except those SW–846 methods that may be required for the analyses of method-defined parameters. Those methods will remain incorporated by reference when used for method-defined parameters and required by the RCRA regulations (a few are not explicitly required by the RCRA regulations at this time).

It is important to note that a method listed in § 260.11(a)(11) because it is used for analysis of a method-defined parameter is sometimes used for non-mandatory purposes. For example, Methods 9010, ''Total and Amenable Cyanide: Distillation,'' and 9012, ''Total and Amenable Cyanide (Automated Colorimetric, with Off-line Distillation)'' are listed in some conditional delistings and are not being used for a method-defined parameter. Therefore, the facilities can use another appropriate method for those analyses. However, these same methods are used as method-defined parameters under § 268.44, the universal treatment standards under the land disposal restrictions regulations. In that case, the methods cannot be substituted. Therefore, due to the latter scenario, those two methods are incorporated by reference in the regulations at § 260.11(a)(11). It is the application of a method in a regulation that determines whether a method is being used to analyze a required method-defined parameter—not simply whether the method is listed in § 260.11(a)(11).

Given this proposal, the SW–846 methods to remain as incorporated by reference in § 260.11(a)(11) are listed in Table 3.

TABLE 3.—SW–846 METHODS TO REMAIN IN § 260.11(A)(11)

SW–846 method	Method title
0010	Modified Method 5 Sampling Train.
0011	Sampling for Selected Aldehyde and Ketone Emissions from Stationary Sources.
0020	Source Assessment Sampling System (SASS).
0023	Sampling Method for Polychlorinated Dibenzo-*p*-Dioxins and Polychlorinated Dibenzofuran Emissions from Stationary Sources.
0030	Volatile Organic Sampling Train.
0031	Sampling Method for Volatile Organic Compounds (SMVOC).
0040	Sampling of Principal Organic Hazardous Constituents from Combustion Sources Using Tedlar® Bags.
0050	Isokinetic HCl/Cl_2 Emission Sampling Train.
0051	Midget Impinger HCl/Cl_2 Emission Sampling Train.
0060	Determination of Metals in Stack Emissions.
0061	Determination of Hexavalent Chromium Emissions from Stationary Sources.
1010	Pensky-Martens Closed-Cup Method for Determining Ignitability.
1020	Small Scale Closed-Cup Method for Determining Ignitability.
1110	Corrosivity Toward Steel.
1310	Extraction Procedure (EP) and Structural Integrity Test.
1311	Toxicity Characteristic Leaching Procedure.
1312	Synthetic Precipitation Leaching Procedure.
1320	Multiple Extraction Procedure.
1330	Extraction Procedure for Oily Wastes.
3542	Extraction of Semivolatile Analytes Collected Using Method 0010 (Modified Method 5 Sampling Train).
5041	Analysis for Desorption of Sorbent Cartridges from Volatile Organic Sampling Train (VOST).
9010	Total and Amenable Cyanide: Distillation.
9012	Total and Amenable Cyanide (Automated Colorimetric, with Off-line Distillation).
9040	pH Electrometric Measurement.
9045	Soil and Waste pH.
9060	Total Organic Carbon (TOC).
9070	n-Hexane Extractable Material (HEM) for Aqueous Samples.
9071	n-Hexane Extractable Material (HEM) for Sludge, Sediment, and Solid Samples.
9095	Paint Filter Liquids Test.

Please note that we are not adding any new methods to § 260.11(a)(11)—each method listed above is already a part of SW–846 and was incorporated by reference during previous rulemakings. We are only removing from incorporation by reference those methods that will no longer be required should this proposal be finalized. For each method retained as incorporated by reference, we are indicating in § 260.11(a)(11) the promulgated version of the method which was last incorporated by reference and thus which must be used during regulatory compliance.

V. Proposed Editorial Corrections to SW–846 References in the RCRA Testing and Monitoring Regulations

We also propose to correct inaccurate references to SW–846 (some of which are logical outgrowths to the proposed revision to § 260.11), and clarify method selection flexibility in the RCRA regulations. Table 4 lists and summarizes these proposed changes to the RCRA regulations.

TABLE 4.—PROPOSED CORRECTIONS AND CLARIFICATIONS

Regulation	Correction or clarification
§ 258.28(c)(1)—Liquids restrictions	Correction to add ''incorporated by reference in § 260.11'' after mention of SW–846 Method 9095, ''Paint Filter Liquids Test''
Appendix I to part 258—Constituents for detection monitoring.	Correction to include SW–846 Method 6020 as an example of an appropriate method for detection monitoring.
Appendix II to part 258—List of inorganic and organic hazardous constituents.	Clarification regarding the use of other appropriate methods by removing the ''Suggested Methods'' and ''PQLs (μ g/L)'' columns, removing footnotes 1, 5 and 6 and revising and renumbering the remaining footnotes, as appropriate. (As noted in footnote 1, the methods and PQLs were given for informational purposes only; and, as noted in footnote 6, the PQLs were directly related to the indicated methods and not part of a regulation.).
§ 260.21(d)—Petitions for equivalent methods	Clarification that equivalent methods will be added to § 260.11, instead of just added to SW–846.
§§ 261.3(a)(2)(v), 279.10(b)(1)(ii), 279.44(c), 279.53(c), and 279.63(c)—Rebuttable presumption for used oil.	Clarification that other appropriate methods beside the example SW–846 methods can be used in analyses to show that a used oil does not contain hazardous waste.
Appendix III to part 261—Chemical analysis test methods.	Clarification regarding the use of other appropriate methods.
§§ 264.1034(f) and 265.1034(f)—Test methods and procedures.	Clarification that appropriate methods other than SW–846 Method 8260 are allowed to resolve disagreements regarding concentration estimates.
Appendix IX to part 264—Ground-water monitoring list.	Clarification regarding the use of other appropriate methods by removing the ''Suggested Methods'' and ''PQLs (μ g/L)'' columns and removing footnotes 1, 5 and 6 and revising and renumbering the subsequent footnotes, as appropriate. (As noted in footnote 1, the methods and PQLs were given for informational purposes only; and, as noted in footnote 6, the PQLs were directly related to the indicated methods and not part of a regulation.).
§ 265.1081—Definitions	Correction to SW–846 reference in definition of ''waste stabilization process''.
Appendix IX to part 266—Methods manual for compliance with BIF regulations.	Corrections to reflect removal of SW–846 methods from the manual on June 13, 1997 and clarification in existing guidance regarding use of other appropriate methods and SW–846.

VI. Proposed Action To Withdraw Reactivity Interim Guidance From SW–846 Chapter Seven and Remove Required SW–846 Reactivity Analyses and Threshold Levels From Conditional Delistings

We are also proposing to withdraw the reactivity interim threshold levels and reactive cyanide and sulfide methods from Chapter Seven of SW–846 and from certain conditional delistings found in appendix IX to 40 CFR part 261. In particular, July 1985, EPA's Office of Solid Waste (OSW) issued a memorandum entitled ''Interim Thresholds for Toxic Gas Generation.'' This 1985 memorandum contained interim threshold levels for toxic cyanide and sulfide gas generation and draft analytical methods for testing wastes for those levels. This reactive cyanide and reactive sulfide guidance was developed in response to public inquiries about how to evaluate wastes for the characteristic of reactivity under § 261.21(a)(5). In response to subsequent concerns about the effectiveness of the guidance (as explained further below), EPA's OSW reexamined the guidance, and on April 21, 1998, issued a memorandum entitled ''Withdrawal of Cyanide and Sulfide Reactivity Guidance'' which withdrew the July 1985 guidance. At this time, given the 1998 withdrawal of the reactive cyanide and sulfide interim threshold levels and draft method guidance, EPA proposes to withdraw the same guidance from Chapter Seven, ''Characteristics Introduction and Regulatory Definitions,'' of SW–846 and to withdraw required uses of the interim threshold levels and methods found in certain conditional exclusions (also called delistings) at 40 CFR part 261, appendix IX. The following paragraphs provide background information regarding the 1985 guidance and its withdrawal in 1998, and provide the basis for this proposal. See the docket, number RCRA–2002–0025, of this rulemaking for a copy of the 1985 and 1998 memorandums.

40 CFR 261.23 contains eight narrative descriptions of properties used to identify solid wastes exhibiting the hazardous waste characteristic of reactivity (EPA Hazardous Waste Number D003). The fifth of those properties at § 261.23(a)(5) addresses cyanide- and sulfide-bearing solid wastes. The regulation states that one way a solid waste can be reactive is if ''it is a cyanide- or sulfide-bearing waste which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.'' The regulation does not require that a particular test method be used for determination of this reactive property. Instead, as with each of the reactivity characteristic properties, the regulated public must base their determination on the narrative standard and knowledge of their waste.

Some of the hazardous waste characteristics are defined in terms of properties measurable by standardized testing protocols. However, regarding the reactivity characteristic, EPA noted that available test methods suffered from a number of shortcomings which made it inappropriate to specify a numerically quantified definition with accompanying test protocols (*see* 45 FR 33110, May 19, 1980). In addition, reactive wastes may exist and pose a hazard under a variety of situations and circumstances, and it would be difficult to adequately quantify and test for all of those situations. The Agency noted that a lack of a quantified definition and accompanying test methods would not cause problems because most generators

of reactive wastes are aware that their wastes possess the property and require special handling. Consequently, the Agency developed the narrative definitions found at § 261.23 as sufficient information to determine whether a waste is hazardous based on reactivity.

However, the Agency received many public inquires regarding how to evaluate wastes for the reactivity characteristic property at § 261.23(a)(5). The Agency therefore initiated studies on the possible development of numerical limits and test methods for the property. On an interim basis, the Agency issued the memorandum in July 1985 which provided interim threshold levels for ''toxic gas generation reactivity.'' These limits were 250 mg of HCN/kg of waste for total available cyanide and 500 mg of H_2S/kg of waste for total available sulfide. The memorandum provided draft testing methods for measuring the available cyanide and sulfide and noted that on-going studies may result in changes to the methods. The memorandum also provided a description of the mismanagement scenario used to derive the interim threshold levels. This scenario assumed disposal of cyanide- and sulfide-bearing wastes into an open pit containing acidic wastes, resulting in a rapid and high level release of toxic gas. After issuance of the 1985 memorandum, the guidance threshold levels and draft test methods were included in sections 7.3.3 (''Interim Guidance for Reactive Cyanide'') and 7.3.4 (''Interim Guidance for Reactive Sulfide'') of Chapter Seven of EPA Publication SW–846, ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods.''

The 1985 memorandum contained non-binding interim guidance and was not a regulation. The EPA reactivity threshold limit and method studies mentioned by the document were not successfully completed. No threshold levels or test methods were ever proposed or promulgated and included in § 261.23(a)(5) as numerically quantified definitions of a reactive hazardous waste. The addition of the 1985 interim limits and draft methods to Chapter Seven of SW–846 did not change the guidance status of the levels and methods for purposes of judging if a waste exhibits the characteristic of reactivity because the reactivity characteristic at § 261.23 does not specify the limits or use of the SW–846 methods. EPA intended that the 1985 and Chapter Seven information only be used as guidance of what might be hazardous.

Since cyanide and sulfide reactivity under § 261.23(a)(5) does not specify the use of a SW–846 method and instead relies on a narrative standard, the SW–846 methods are not incorporated by reference at § 260.11 for the purpose of determining whether a waste is hazardous based on that property of the reactivity characteristic. However, as noted above in section III.A (''Removal Of Requirements to Use only SW–846 in §§ 260.22(d)(1)(i) and Appendix IX to Part 261'') of this proposal, some conditional delistings were promulgated after 1985 that require the use of SW–846 methods, including use of the reactive cyanide and reactive sulfide test methods found in SW–846 Chapter Seven. Some of these conditional delistings also specify the reactive cyanide and sulfide limits of 250 mg/kg and 500 mg/kg, respectively, as delisting action levels.

In early 1998, the National Enforcement Investigations Center (NEIC) of EPA expressed concerns regarding the effectiveness of the reactivity guidance contained in the 1985 memorandum and Chapter Seven of SW–846, and urged that EPA withdraw the guidance. Consequently, EPA's OSW conducted a review of the 1985 guidance mismanagement scenario, the derivation of the guidance threshold levels, and the relationship of the scenario and thresholds to the test method results. After this careful review, EPA concluded that NEIC's concerns regarding effectiveness of the guidance were well founded. To summarize, EPA concluded that the guidance had the following significant flaws: (1) The test conditions evaluate a single pH condition and not the range of pH conditions (2 to 12.5) specified in the regulation; (2) the test conditions do not adequately recover the analyte and thus the tests predict low percentages of analyte releases in the waste, (3) the mismanagement scenario and test conditions are not correctly scaled between each other, and (4) the mismanagement scenario of an open pit is not the only exposure of concern and may not represent a plausible worst case scenario. (See the April 21, 1998 memorandum at *http://www.epa.gov/SW–846/* for detailed information regarding NEIC's concerns and EPA's conclusions.) EPA consequently withdrew the July 1985 guidance through the aforementioned April 21, 1998 memorandum.

Therefore, in conjunction with the 1998 withdrawal of the 1985 cyanide and sulfide reactivity guidance, we propose to remove sections 7.3.3 and 7.3.4 from Chapter Seven of SW–846. We will include the revised Chapter Seven in Proposed Update IIIB to SW–846.

It is necessary to use a rulemaking to remove sections 7.3.3 and 7.3.4 from Chapter Seven, even though the sections were originally added only as guidance, because as noted above certain conditional delistings found in Tables 1 and 2 of 40 CFR part 261, appendix IX, do require use of the methods in those sections. The 1998 withdrawal of the 1985 guidance did not affect those requirements. Since the delistings require the use of SW–846 methods, the reactive cyanide and sulfide methods found in SW–846 are incorporated by reference for the purpose of implementing those specific delisting provisions. We therefore, propose to remove required uses of the SW–846 Chapter Seven methods for reactive cyanide and sulfide from a number of conditional delistings.

In addition, some of the conditional waste exclusions list the reactive cyanide and sulfide interim threshold levels found in the 1985 memorandum and in Chapter Seven as delisting action limits. Therefore, due to Agency concerns regarding the effectiveness of those levels for determining whether a waste is hazardous, the Agency also proposes to remove those levels from the delistings.

The Agency notes that the exclusions in 40 CFR part 261 appendix IX only apply to listed hazardous wastes. As noted by §§ 260.22(c)(2), (d)(4) and (e)(4), an excluded waste may still be a hazardous waste by operation of subpart C of part 261, which contains the RCRA regulations addressing characteristic hazardous wastes. Therefore, generators of excluded wastes are still required to continue to determine whether their wastes remain non-hazardous based on the four hazardous waste characteristics, including the characteristic of reactivity. (EPA's ''RCRA Delisting Program Guidance Manual for the Petitioner,'' March 23, 2000, affirms this requirement by stating that generators with excluded wastes remain obligated to determine whether their waste remains non-hazardous based on the hazardous waste characteristics.) Therefore, removal of required testing for reactive cyanide and sulfide based on the SW–846 methods and threshold levels does not relieve the generators of delisted wastes from a reactivity characteristic determination. Given the regulatory requirement in § 260.22(c)(2), (d)(4) and (e)(4) it also is not necessary to replace the reactive cyanide and sulfide method requirements or threshold levels in those delistings with language requiring a determination based on the narrative at § 261.23(a)(5),

or on any other property under the reactivity characteristic.

As noted by the 1998 memorandum, we understand that withdrawal of the reactivity guidance meant that waste generators who relied on this guidance in the past might have somewhat greater uncertainty about determining the regulatory status of their cyanide- and sulfide-bearing wastes. However, the Agency believes that generators of sulfide- and cyanide-bearing wastes can recognize the acute toxicity of sulfides and cyanides without relying on the guidance test methods and threshold levels. Where wastes with high concentrations of soluble sulfides and cyanides are managed, generators have relied on their knowledge of the waste to classify them as D003. Generators should continue to classify their high concentration sulfide- and cyanide-bearing wastes as hazardous based on the narrative standard of 261.23(a)(5), as they always have been required to do.

We are interested in public comments on the removal of the reactivity guidance from Chapter Seven and on the removal of the reactive cyanide and sulfide analytical requirements and threshold levels from the conditional delistings.

VII. Proposed Clarifications to Corrosivity and Ignitability Hazardous Waste Characteristics

Sections VII.A and VII.B address proposed revisions to the corrosivity characteristic and the ignitability characteristic testing requirements. The revisions include changes to references to ASTM standards and SW–846 methods. These revisions are non-substantive updates of the methods presently used in the regulations and will not affect which wastes are determined to be hazardous based on the characteristics. We request public comment on each of the proposed revisions.

A. Revision to § 261.22(a)(2) To Clarify That SW–846 Method 1110 Is the SW–846 Standardized Version of the NACE Standard Specified for Corrosivity Characteristic Testing

Section 261.22(a)(2) defines the hazardous waste characteristic of corrosivity for a liquid which corrodes steel. The required test method for the determination is identified as ''the test method specified in NACE * * * Standard TM–01–69 as standardized in * * * SW–846 * * *'' As explained in the May 19, 1980 regulations (*see* 45 FR 33084) which added § 261.22 to the RCRA regulations, EPA standardized the NACE Standard TM–01–69 in SW–846. As also explained in the background document to the corrosivity characteristic, NACE Standard TM–01–69 describes a simple immersion test to determine the rate of corrosion, and the procedure is not completely standardized because it was designed to test the suitability of metals for a variety of uses. In 1980, a public commenter was concerned that the incomplete standardization of the NACE Standard permitted undesired variation in test conditions. EPA agreed and, in response to the public comment, put a standardized version of the method in SW–846 so that the procedure more clearly defined the appropriate test conditions. At the time, we did not specify which test method of SW–846 included the standardized version of the NACE method. This SW–846 method has always been Method 1110, ''Corrosivity Toward Steel.'' Therefore, we propose to add the number of this method to § 261.22(a)(2) for clarification of which SW–846 test method is the standardized version of NACE. This revision to § 261.22(a)(2) does not represent a change to the characteristic.

B. Revisions to § 261.21(a)(1) To Update References to ASTM Standards, To Clarify That SW–846 Methods 1010 and 1020 Reference and Use the ASTM Standards Specified for Ignitability Characteristic Testing, and To Remove an Unnecessary Referral to Method Equivalency Petitions; and Revisions to § 260.11(a)(1) and (2) To Include the Updated References

Section 261.21(a)(1) defines the hazardous waste characteristic of ignitability for a liquid which has a flash point less than 60 °C (140 °F). For the determination, the section requires the Pensky-Martens Closed Cup Tester using ASTM Standard D 93–79 or D 93–80, or a Setaflash Closed Cup Tester using ASTM Standard D 3278–78. The American Society for Testing and Materials (ASTM) has revised these standards. We compared the latest versions of the standards with the ones currently referenced by § 261.21(a)(1). We found that the differences between ASTM Standard D 3278–78 and the new version D 3278–96 were not substantive and will not affect whether a waste is identified as hazardous based on the ignitability characteristic. We also compared ASTM Standard D 93–80 with the newer versions D 93–99c and D 93–00. Again, we found that the D 93–99c differences were not substantial. However, we found that the D 93–00 differences may be substantial because that version specifies different sample container volumes for different sample types. Specifically, it requires that all matrices except residual fuel oil be collected in containers not more than 85% or less than 50% full. The revision may significantly affect the characteristic results, since the potential to lose flammable volatile constituents will be greater from sample containers that may now have as much as 50% headspace. We are interested in public comment on this evaluation and conclusion. You can review a copy of our ASTM standard comparisons in the docket (number RCRA–2002–0025) to this proposed rule.

Given the above, we propose to revise § 261.21(a)(1) so that the use of ''ASTM Standard D 93–79 or ASTM Standard D 93–80'' is replaced by the use of ''ASTM Standard D 93–99c'' for an ignitability characteristic determination using the Pensky-Martens Closed Cup Tester. We also request comment on whether we should instead replace the older standard with ''ASTM Standard D 93–00.'' Please give detailed reasons for your position.

Likewise, we propose to revise § 261.21(a)(1) whereby the use of ''ASTM Standard D 3278–78'' is replaced by the use of ''ASTM Standard D 3278–96'' for a determination using the Small Scale Closed Cup Apparatus (formerly called the Setaflash Closed Cup Tester in ASTM D 3278–78). We also propose to revise the incorporation by reference citations for these methods at § 260.11(a)(1) and (2) to reflect the updated references of these ASTM methods.

In addition, the most current versions of SW–846 Method 1010, ''Pensky-Martens Closed-Cup Method for Determining Ignitability,'' and Method 1020, ''Setaflash Closed-Cup Method for Determining Ignitability,'' use the above ASTM standards as their method procedures. A brief summary of the ASTM procedure is provided by each method and the reader is referred to the appropriate ASTM standard for information on how to conduct the subject test. Therefore, we propose to also revise § 261.21(a)(1) to clarify that the ASTM standards for ignitability characteristic determinations are used and referenced by the subject SW–846 methods.

Finally, regarding § 261.21(a)(1), we propose to remove the end of the last sentence which refers to the equivalent test method demonstration. This information is adequately addressed in §§ 260.20 and 260.21. It is not necessary to repeat the information regarding method equivalency petitions in each section of a RCRA regulation which requires use of a test method. Also, this revision is consistent with similar sections on testing in part 261 and other parts of the RCRA regulations.

None of the above proposed revisions represent a change to the ignitability characteristic.

VIII. Availability of Proposed Update IIIB and Invitation for Public Comment on the Update

SW–846 is a guidance document that changes over time as new information and data are developed. Today, we propose to revise several methods and chapters of SW–846 and release these revisions as an update to the Third Edition of SW–846. To date, EPA has finalized Updates I, II, IIA, IIB, III, and IIIA to the Third Edition of the SW–846 manual. On May 8, 1998 (*see* 63 FR 25430) and on November 27, 2000 (*see* 65 FR 70678), we also respectively announced the availability of Draft Update IVA and Draft Update IVB methods and chapters, which we published for guidance purposes only. The revised methods of today's update (Update IIIB) are used for method-defined parameters and thus, any required uses of those methods will remain in the RCRA regulations (a few of the methods are not explicitly required in the current RCRA regulations). Therefore, we are formally proposing them today as Update IIIB to SW–846. Our reasons for the method revisions follow.

First, as noted earlier, ASTM released Standards D 93–99c, ''Flash Point by Pensky-Martins Closed Cup Tester,'' to replace D 93–80 (which previously replaced D 93–79) and D 3278–96, ''Flash Point of Liquids by Small Scale Closed-Cup Apparatus,'' to replace D 3278–78. The current versions of SW–846 Methods 1010 and 1020 reference the older versions of those standards. We propose to replace these out-of-date references in Methods 1010 and 1020 with references to the newer versions of the subject ASTM standards. We also propose to revise the title of Method 1020 from ''Setaflash Closed-Cup Method for Determining Ignitability'' to ''Small Scale Closed Cup Method for Determining Ignitability'' for consistency with the title of ASTM Standard D 3278–96. None of the above revisions to Methods 1010 and 1020 represent a change to the ignitability characteristic.

We also propose to clarify the surface area equation found in Sec. 4.5 of Method 1110, ''Corrosivity Toward Steel.'' We have received questions from the public indicating that the current equation is not sufficiently clear as written, due to the equation font and format. We wish to note that the equation shown in the method can be correctly followed if one uses the rules for mathematical function precedence (addition, subtraction, multiplication, and then division). Nevertheless, we are changing Sec. 4.5 of Method 1110 to a format that is less subject to misinterpretation. This does not represent a significant change to that method or the characteristic because the new presentation does not change the equation or calculation result.

We also propose to include in Update IIIB seven revised methods which will be retained at § 260.11(a)(11) because they might be required for RCRA-related method-defined parameters. We are also revising the text in section 6.0 of most of these methods to remove required uses of Chapter Nine during the required uses of those methods. We are making these revisions to clarify that use of sampling directions found in Chapter Nine of SW–846 is guidance and not required under the RCRA Program. These revisions do not modify any required uses of the methods in the RCRA regulations or the results from using the methods. Regarding Method 9070A, we are adding the suffix ''A'' and a method title, which were inadvertently left out during its last promulgation as part of Update IIIA.

To address editorial revisions due to the revised methods, Update IIIB will include a revised Table of Contents and revised Chapters Five, Six, and Eight. Chapters Five, Six, and Eight will be revised to include the new method numbers for the revised methods of Proposed Update IIIB. Also, Chapter Seven will be revised to reflect the withdrawal of the reactive cyanide and sulfide guidance in sections 7.3.3 (''Interim Guidance for Reactive Cyanide'') and 7.3.4 (''Interim Guidance for Reactive Sulfide''), and to replace certain characteristic explanatory text with referrals to the regulations themselves.

In conclusion, we propose to revise § 260.11(a)(11) to include the eleven Update IIIB revised methods described above. Table 5 provides a listing of the Update IIIB eleven revised SW–846 methods and four revised chapters and Table of Contents. The method numbers in the table reflect the appropriate method revision letter suffix (*e.g.*, A, B, C, etc.). These suffixes are not always reflected in the RCRA regulations themselves (*e.g.*, the regulations typically only cite the method number without a suffix), nor are they reflected at § 260.11(a)(11). However, as noted earlier in this proposal, during compliance with those regulations, the regulated community must only use the latest promulgated revision of those methods as indicated in § 260.11(a)(11).

Table 5 also identifies those sections or parts of each method or chapters which are revised and are open for public comment. We will not consider comments on the other sections or parts of the methods or chapters because those portions are not changed by Proposed Update IIIB.

TABLE 5.—REVISED METHODS AND CHAPTERS

Method No.	Method or chapter title	Sections or parts of methods or chapters open for comment
	Table of Contents	References to the revised methods.
	Chapter Five—Miscellaneous Test	References to the revised methods.
	Chapter Six—Properties	References to the revised methods.
	Chapter Seven—Characteristics Introduction	Secs. 7.1.2, 7.2.2, 7.3.2, and removal of secs. 7.3.3 and 7.3.4.
	Chapter Eight—Methods for Determining Characteristics.	References to the revised methods.
1010A	Pensky-Martens Closed-Cup Method for Determining Ignitability.	Secs. 1.1, 1.2, 2.2, and 3.1 and ref. 4 of sec. 4.0.
1020B	Small Scale Closed Cup Method for Determining Ignitability.	Title and secs. 1.1, 1.3, 2.1, and 2.4 and ref. 4 of sec. 4.0.
1110A	Corrosivity Toward Steel	Sec. 4.5.
1310B	Extraction Procedure (EP) Toxicity Test Method and Structural Integrity Test.	Secs. 1.1 and deleted 6.1
9010C	Total and Amenable Cyanide: Distillation	Secs. 1.1 and deleted 6.1.

TABLE 5.—REVISED METHODS AND CHAPTERS—Continued

Method No.	Method or chapter title	Sections or parts of methods or chapters open for comment
9012B	Total and Amenable Cyanide (Automated Colorimetric, with Off-line Distillation).	Secs. 1.1 and deleted 6.1.
9040C	pH Electrometric Measurement	Deleted Sec. 6.1.
9045D	Soil and Waste pH	Deleted Sec. 6.1.
9060A	Total Organic Carbon	Deleted Sec. 6.1.
9070A	n-Hexane Extractable Material (HEM) for Aqueous Samples.	Title.
9095B	Paint Filter Liquids Test	Deleted Sec. 6.1.

Note: A suffix of ''A'' in the method number indicates revision one (the method has been revised once). A suffix of ''B'' in the method number indicates revision two (the method has been revised twice). A suffix of ''C'' in the method number indicates revision three (the method has been revised three times).

IX. Proposed Addition of Method 25A to §§ 264.1034(c)(1)(ii) and (iv) and 265.1034(c)(1)(ii) and (iv)

We propose to revise §§ 264.1034(c)(1)(ii) and (iv) and 265.1034(c)(1)(ii) and (iv) to allow use of Method 25A, as well as Method 18, during analyses in support of air emission standards for process vents and/or equipment leaks at hazardous waste management facilities. We added the flexibility to use a method other than Method 18 as a result of feedback from the regulated public. Method 18 is a technique best applied when the test matrix is known and the number of target compounds is limited. It identifies individual components. On the other hand, Method 25A is a total volatile organic compound (VOC) measurement method. Members of the regulated public found it difficult to effectively use Method 18 in compliance with the subject regulation because their sources contain up to hundreds of regulated compounds, and because the test matrix changes daily. The Agency believes that allowing the use of Method 25A will solve this problem. Also, from an environmental protection viewpoint, Method 25A may be more protective than Method 18 because it is a total analysis method and responds to total volatile organic carbon without differentiating among individual components. Therefore, this change will allow the needed method selection flexibility without lessening environmental protection. As part of this change, we added equations for the calculation of total mass flow rates for sources utilizing Method 25A. Both Methods 25A and 18 are located in 40 CFR part 60, appendix A.

X. Proposed Removal of Requirements from § 63.1208(b)(8)(i) and (ii) in the NESHAP Standards to Demonstrate Feedstream Analytes are not Present at Certain Levels

EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Hazardous Waste Combustors on September 30, 1999 pursuant to section 112 of the Clean Air Act. Sections 63.1208(b)(8)(i) and (ii) require sources, for each feedstream, to demonstrate that: (1) Each analyte is not present above the reported level at the 80% upper confidence limit around the mean; and (2) the analysis could have detected the presence of the constituent at or below the reported level at the 80% upper confidence limit around the mean.

Several stakeholders raised concerns about implementing this requirement. For example, stakeholders questioned the ability to calculate a confidence level around the mean for data distributions that are not ''normal.'' Stakeholders also raised the concern that applying a confidence level criteria to each individual feedstream unnecessarily results in a combined feedstream confidence level that is much higher than 80%. While the original intent of these provisions was to place a greater emphasis on performance rather than protocol, the provisions as written are not clear. For example, the term ''reported level'' is not defined and is not used elsewhere in the regulations. This makes interpretation and application of these provisions difficult.

Upon re-evaluating this provision, we believe that it is inappropriate to require explicit feedstream analytical DQO requirements for hazardous waste combustors in the regulations. The various questions raised by stakeholders suggest that issues relating to feedstream analytical DQOs need to be addressed on a case-by-case basis. We therefore propose to delete § 63.1208(b)(8)(i) and (ii). We will retain the preceding regulatory language that states ''It is your responsibility to ensure that the sampling and analysis procedures are unbiased, precise, and that the results are representative of the feedstream.'' In addition to the above regulatory language, we note that § 63.1209(c) also addresses general feedstream analysis requirements. In particular, § 63.1209(c)(1) states that a source must, prior to feeding the material, ''obtain an analysis of each feedstream that is sufficient to document compliance with the applicable feedrate limits.'' We believe that sources should develop feedstream analytical DQOs consistent with the general principal of ensuring compliance with their applicable feedstream limits.

We anticipate that hazardous waste combustion sources will establish feedstream analytical DQOs that reflect the site-specific needs at their particular facility, and include these DQOs in their Title V permit (when required by the permitting official) and also in their feedstream analysis plan that is required pursuant to § 63.1209(c). This feedstream analysis plan must be kept on site in the operating record, and is subject to review and approval by the authorized regulatory Agency upon request.

XI. Announcing the Availability of the RCRA Waste Sampling Draft Technical Guidance

A. Why Is the Agency Releasing this Guidance?

As part of the Agency's efforts towards Innovating for Better Environmental Results, we have worked to revise the existing waste sampling guidance in Chapter Nine of SW–846. Many advances in waste sampling strategies have occurred since the existing waste sampling guidance Chapter Nine was initially published in 1986.

The Agency believes that a critical element in a program design is a well-thought out systematic waste sampling or characterization plan for evaluating hazardous wastes. This should include consideration of approaches to address issues regarding evaluating physical and

chemical properties of solid waste. We believe it is our obligation to provide current guidance and better tools to address these environmental monitoring issues in accordance with performance based measurement principles.

Several EPA offices have worked closely together to develop this guidance (the Office of Solid Waste, EPA Regions, the Office of Research and Development, and the Office of Enforcement and Compliance Assurance.) In addition, in order to achieve expert external peer review, we have sought and received considerable input from public stakeholders knowledgeable about sampling issues and techniques.

B. What Is Included in the Draft Guidance?

The draft technical guidance contains information on how to develop a sampling plan to determine if (1) a solid waste exhibits any of the characteristics of a hazardous waste, (2) a hazardous waste is prohibited from land disposal regulations, and (3) a numeric treatment standard has been met. The guidance can also be used as a tool for implementing and assessing your program. In addition, the guidance is an excellent resource of information on other guidance documents that may help the user meet other sampling objectives such as site characterization under the RCRA corrective action programs.

Finally, the guidance includes a glossary of terms, information on fundamental statistical concepts and optimizing the design for obtaining the data, examples of how to control variability and bias in sampling, guidance on selecting equipment and conducting sampling analysis, and information on how to assess data.

In addition, we believe the guidance is a good working tool for planning and implementing your sampling program, and assessing sampling information. The guidance includes statistical concepts which can promote the development of scientifically sound and effective data. It is our intention to provide these statistical concepts in a user-friendly manner.

C. Will This Guidance Replace the Existing Chapter Nine of SW–846?

This document will update and replace the original sampling guidance version of Chapter Nine found in EPA publication SW–846 when the Fourth Edition of SW–846 is published. It is our intention to make the guidance available as a stand-alone document titled, ''RCRA Waste Sampling Draft Technical Guidance.''

After receipt of your comments, EPA will evaluate them and then revise the guidance as appropriate. The document when finalized will replace the existing sampling guidance of Chapter Nine, and SW–846 will reference the separate, stand-alone sampling guidance document.

D. Can the Draft Technical Guidance Be Used Now?

By releasing the guidance, EPA immediately makes available a wealth of new statistical concepts, examples, and approaches to waste sampling and characterizations. The Agency believes the regulated community and others will use the guidance when it is appropriate and beneficial to do so. The guidance has undergone extensive technical and peer review from EPA's Office of Research and Development (ORD), the American Society of Testing and Material (ASTM), and Academia, and is considered a useable tool. The guidance is not required, and does not replace any regulation or impose any regulatory requirement. Through this announcement, we are making it available to assist the public in addressing issues regarding waste sampling and characterization. Users of the guidance will still be obligated to follow regulations which govern any particular program.

Furthermore, the Agency believes the public will be pleased with the information contained in this document and will choose to use it immediately when appropriate to do so, because of the quality of information provided. The guidance promotes flexibility and cost effectiveness in achieving improved technologies in sampling design. Finally, the release of the guidance has been requested by the public for some time.

Therefore, we believe that this guidance will become an important part of the RCRA program, and will be helpful to users in sampling and characterizing waste streams. We are making the draft technical guidance available to the public on the Web and in the RCRA docket. Please see the instructions in section I.A of the proposed rule for obtaining information on the draft technical guidance via the EPA Internet website or the RCRA docket.

E. When Will the Guidance Be Finalized?

The guidance may be finalized through one of two courses of action. The Agency may place this guidance on a separate track of its own and finalize it soon after careful consideration of all comments received under this notice of availability. On the other hand, the Agency may announce the availability of the Final Technical Guidance as part of the Final Methods Innovation Rule (MIR) package. Depending on the extent of comments received, the process may take approximately fifteen months.

F. Request for Comment

The Agency developed the ''RCRA Waste Sampling Draft Technical Guidance'' for use by members of both the regulated community and regulating authorities. By making it available for public comment, we hope to encourage involvement in its development by all stakeholders. All portions of the document are open to comment. Your comments will help us improve the guidance and ensure that it is most beneficial to users. Follow the directions for submitting public comments given in section I.B of this proposed rule and notice of availability.

XII. State Authorization Procedures

A. Applicability of Federal Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer the RCRA hazardous waste program within the state. Following authorization, the state requirements authorized by EPA apply in lieu of equivalent Federal requirements and become Federally enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized states also have independent authority to bring enforcement actions under state law. A state may receive authorization by following the approval process described in 40 CFR part 271. 40 CFR part 271 also describes the overall standards and requirements for authorization.

After a state receives initial authorization, new Federal regulatory requirements promulgated under the authority in the RCRA statute which existed prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that state until the state adopts and receives authorization for equivalent state requirements. The state must adopt such requirements to maintain authorization.

In contrast, under RCRA section 3006(g) (*i.e.*, 42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized states. Although authorized states are still required to

update their hazardous waste programs to remain equivalent to the Federal program, EPA carries out HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so.

Finally, authorized states are required to modify their programs only when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements. RCRA section 3009 allows the states to impose standards more stringent than those in the Federal program. *See* also § 271.1(i). Therefore, authorized states are not required to adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent.

B. Authorization of States for Today's Proposal

Today's proposal affects many aspects of the RCRA Program and would be promulgated pursuant to both HSWA and non-HSWA statutory authority. Therefore, when promulgated, the Agency will add the rule to Table 1 in § 271.1(j), which identifies Federal regulations that are promulgated pursuant to the statutory authority that was added by HSWA. States may apply for final authorization for the HSWA provisions, as discussed in the following section of this preamble.

Today's proposed rule language provides standards that are equivalent to or less stringent than the existing provisions in the Federal regulations which they would amend. Therefore, States would not be required to adopt and seek authorization for this rulemaking. EPA would implement this rulemaking only in those states which are not authorized for the RCRA Program, and will implement provisions promulgated pursuant to HSWA only in those states which have not received authorization for the HSWA provision that would be amended. In authorized States, the changes will not be applicable until and unless the State revises its program to adopt the revisions. (Note: Procedures and deadlines for State program revisions are set forth in § 271.21.)

This rule will provide significant benefits to EPA, states, and the regulated community, without compromising human health or environmental protection. Because this rulemaking would not become effective in authorized states until they adopted and are authorized for it, EPA will strongly encourage states to amend their programs and seek authorization for today's proposal, once it becomes final.

C. Abbreviated Authorization Procedures

EPA considers today's proposal to be a minor rulemaking and is proposing to add it to the list of minor or routine rulemakings in Table 1 to § 271.21. Placement in this table would enable states to use the abbreviated procedures located in § 271.21(h) when they seek authorization for today's proposed changes after they are promulgated. These abbreviated procedures were established in the HWIR-media rulemaking (see 63 FR 65927, November 30, 1998). EPA requests comment on this placement in Table 1 to § 271.21.

XIII. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a proposed regulatory action is ''significant,'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

OMB determined that this proposed rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review and the requirements of the Executive Order.

B. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA or the Act), Pub. L. 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 UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed rules and final rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed, section 205 of the Act generally requires EPA to identify and consider a reasonable number of regulatory alternatives. Under section 205, EPA must adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, unless the Administrator explains in the final rule why that alternative was not adopted. The provisions of section 205 do not apply when they are inconsistent with applicable law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

First, this proposed rule does not contain a Federal mandate. The proposed rule imposes no enforceable duty on any State, local or tribal governments. This proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. This is due to the fact that this rule does not add any new regulatory requirements and States need not adopt its revisions. This rule only revises certain regulatory sections to remove required uses of SW–846 methods and allow the use of other appropriate methods or to clarify allowed flexibility in method selection for meeting RCRA-related monitoring requirements. Under RCRA, regardless of the method used—the one specified in the regulation or the ''other appropriate method''—regulated entities should be demonstrating that the method is appropriate for its intended use. This rule also does not propose new monitoring or information collection requirements. The additional flexibility allowed by this rule should result in improved data quality at reduced cost. Thus, today's proposed rule is not subject to the requirements of sections 202, 203 and 205 of UMRA.

C. 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 that is independently owned and operated and not dominant in its field as defined by Small Business Administration (SBA) regulations under Section 3 of the Small Business Act for SIC; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's proposed rule, if finalized, is specifically intended to reduce economic burden for all entities. The proposed action will provide greater flexibility and utility to all effected entities, including small entities, by providing an increase in choices of appropriate analytical methods for RCRA applications. It does not create any new regulatory requirements or require any new reports beyond those now required by the revised regulations. In addition, its revisions need not be adopted by regulated entities. Such entities can continue to use the methods specified in the regulations instead of choosing the option to use appropriate methods from other reliable sources. We have therefore concluded that today's proposed rule will relieve regulatory burden for small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Environmental Justice (Executive Order 12898)

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' February 11, 1994, requires that regulatory actions be accompanied by an environmental justice analysis. This analysis must look at potentially disproportionate impacts the action may have on minority and/or low-income communities.

The Agency has determined that the proposed action does not raise environmental justice concerns. The impact of this proposed rule, if finalized, will be to provide increased flexibility in the choice of appropriate analytical methods for RCRA applications. The Agency is not aware of any disproportionate impacts that such flexibility may have on minority and/or low-income communities.

E. Protection of Children from Environmental Health Risks and Safety Risks (Executive Order 13045)

Executive Order 13045, ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. Also, 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 proposed rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. The action discussed in today's proposed rule is intended to provide regulatory relief, and thus is not strictly subject to Executive Order 13045.

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

Executive Order 13175 (65 FR 67249) entitled, ''Consultation and Coordination with Indian Tribal Governments'' 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, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

Today's proposed 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. For many of the same reasons described above under unfunded mandates, the requirements of the Executive Order do not apply to this proposed rulemaking. As stated above, this rule does not propose any new regulatory requirements and governments need not adopt it. It does not impose any direct compliance costs on tribal governments. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Federalism (Executive Order 13132)

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

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As explained above, today's proposed rule does not impose new requirements on the States and its regulatory changes need not be adopted by the States. Thus, Executive Order 13132 does not apply to this rule. Because these changes are equivalent to or less stringent than the existing Federal program, states would not be required to adopt and seek authorization for them.

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.

H. National Technology Transfer And Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note) 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 us to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule increases flexibility in the use of methods for RCRA-related analyses and does not itself identify or require the use of new methods or other technical standards. In fact, this rule, if finalized, may increase the use of available voluntary consensus standards for some RCRA applications, provided that such methods are appropriate for the regulatory application. The only technical standards included in this rule include the proposed replacement of obsolete references to voluntary consensus standards, in this case ASTM Methods D 3278–78 and D 93–79 or D 93–80 for flash point determinations, with references to the most recent versions of those methods, ASTM Methods D 3278–96 and D 93–99c, in the SW–846 methods (Methods 1010 and 1020). The recent versions of the methods are not significantly different from the older versions. EPA welcomes comments on this aspect of the proposed rulemaking.

I. Energy Effects (Executive Order 13211)

This proposed 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. Further, we have concluded that this proposed rule is not likely to have any adverse energy effects.

J. Paperwork Reduction Act

This action does not impose any new information collection burden. There are no additional reporting, notification, or recordkeeping provisions associated with today's proposed rule. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in some of the existing regulations being revised by this proposed rule, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control numbers for those information collection requirements, as follows:

—40 CFR 258.28: OMB control number 2050–0122
—40 CFR 260.21 and 260.22: OMB control number 2050–0053
—40 CFR 261.3: OMB control number 2050–0085
—40 CFR 261.35: OMB control number 2050–0115
—40 CRF 264.1034, 264.1063, 265.1034, and 265.1063: OMB control number 2050–0050
—40 CFR 266.100, 266.102, 266.106, 266.112, Appendix IX to part 63, and 270.22: OMB control number 2050–0073
—40 CFR 270.19: OMB control number 2050–0009
—40 CFR 270.62: OMB control numbers 2050–0009 and 2050–0149
—40 CFR 270.66: OMB control numbers 2050–0073 and 2050–0149
—40 CFR 279.10, 279.44, 279.53 and 279.63: OMB control number 2050–0124

Copies of the ICR document(s) may be obtained from Sandy Farmer, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail 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.* Include the ICR and/or OMB number in any correspondence.

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.

List of Subjects

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 258

Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Incorporation by reference, Reporting and recordkeeping requirements.

40 CFR Part 261

Environmental protection, Comparable fuels, syngas fuels, Excluded hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 264

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 266

Environmental protection, Energy, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 270

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 279

Environmental protection, Petroleum, Recycling, Reporting and recordkeeping requirements.

Dated: October 9, 2002.

Christine Todd Whitman,

Administrator, U.S. Environmental Protection Agency.

For the reasons set out in the preamble, title 40, Chapter I, of the Code of Federal Regulations EPA proposes to amend as set forth below:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

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

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

Subpart EEE—National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors

2. Section 63.1208 is amended by revising paragraph (b)(8) to read as follows:

§ 63.1208 What are the test methods?

* * * * *

(b) * * *

(8) Feedstream analytical methods. You may use any reliable analytical method to determine feedstream concentrations of metals, chlorine, and other constituents. It is your responsibility to ensure that the sampling and analysis procedures are unbiased, precise, and that the results are representative of the feedstream.

* * * * *

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

3. 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).

Subpart C—Operating Criteria

4. Section 258.28 is amended by revising paragraph (c)(1) to read as follows:

§ 258.28 Liquids restrictions.

* * * * *

(c) * * *

(1) Liquid waste means any waste material that is determined to contain ''free liquids'' as defined by Method 9095 (Paint Filter Liquids Test), included in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'' (EPA Publication SW–846), incorporated by reference in § 260.11.

* * * * *

5. Appendix I to part 258 is amended by revising footnote 1 to read as follows:

Appendix I to Part 258—Constituents for Detection Monitoring [1]

* * * * *

[1] This list contains 47 volatile organics for which potentially applicable analytical procedures provided in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'' (EPA Publication SW–846) include Method 8260; and 15 metals for which SW–846 provides Methods 6010, and 6020, or the 7000 series of methods.

* * * * *

6. Appendix II to part 258 is revised as follows:

Appendix II to Part 258—List of Hazardous Inorganic and Organic Constituents

Common name [1]	CAS RN [2]	Chemical abstracts service index name [3]
Acenaphthene	83–32–9	Acenaphthylene, 1,2-dihydro-
Acenaphthylene	208–96–8	Acenaphthylene
Acetone	67–64–1	2-Propanone
Acetonitrile; Methyl cyanide	75–05–8	Acetonitrile
Acetophenone	98–86–2	Ethanone, 1-phenyl-
2-Acetylaminofluorene; 2–AAF	53–96–3	Acetamide, N–9H-fluoren-2-yl-
Acrolein	107–02–8	2-Propenal
Acrylonitrile	107–13–1	2-Propenenitrile
Aldrin	309–00–2	1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro- (1,4,4a,5,8,8a)-
Allyl chloride	107–05–1	1-Propene, 3-chloro-
4-Aminobiphenyl	92–67–1	[1,1′-Biphenyl]- 4-amine
Anthracene	120–12–7	Anthracene
Antimony	(Total)	Antimony
Arsenic	(Total)	Arsenic
Barium	(Total)	Barium
Benzene	71–43–2	Benzene
Benzo[a]anthracene; Benzanthracene	56–55–3	Benz[a]anthracene
Benzo[b]fluoranthene	205–99–2	Benz[e]acephenanthrylene
Benzo[k]fluoranthene	207–08–9	Benzo[k]fluoranthene
Benzo[ghi]perylene	191–24–2	Benzo[ghi]perylene
Benzo[a]pyrene	50–32–8	Benzo[a]pyrene
Benzyl alcohol	100–51–6	Benzenemethanol
Beryllium	(Total)	Beryllium
alpha-BHC	319–84–6	Cyclohexane, 1,2,3,4,5,6- hexachloro-,(1α,2α,3β,4α,5β,6β)-
beta-BHC	319–85–7	Cyclohexane, 1,2,3,4,5,6- hexachloro-,(1α,2β,3α,4β,5α,6β)-
delta-BHC	319–86–8	Cyclohexane, 1,2,3,4,5,6- hexachloro-,(1α,2α,3α,4β,5α,6β)-
gamma-BHC; Lindane	58–89–9	Cyclohexane, 1,2,3,4,5,6- hexachloro-,(1α,2α,3β,4α,5α,6β)-
Bis(2-chloroethoxy)methane	111–91–1	Ethane, 1,1′-[methylenebis (oxy)]bis [2-chloro-
Bis(2-chloroethyl)ether; Dichloroethyl ether	111–44–4	Ethane, 1,1′-oxybis[2-chloro-

Common name [1]	CAS RN [2]	Chemical abstracts service index name [3]
Bis(2-chloro-1-methylethyl) ether; 2,2′- Dichlorodiisopropyl ether; DCIP, See note 4.	108–60–1	Propane, 2,2′-oxybis[1-chloro-
Bis(2-ethylhexyl) phthalate	117–81–7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl)ester
Bromochloromethane; Chlorobromethane	74–97–5	Methane, bromochloro-
Bromodichloromethane; Dibromochlormethane	75–27–4	Methane, bromodichloro-
Bromoform; Tribromomethane	75–25–2	Methane, tribromo-
4-Bromophenyl phenyl ether	101–55–3	Benzene, 1-bromo-4-phenoxy-
Butyl benzyl phthalate; Benzyl butyl phthalate	85–68–7	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester
Cadmium	(Total)	Cadmium
Carbon disulfide	75–15–0	Carbon disulfide
Carbon tetrachloride	56–23–5	Methane, tetrachloro-
Chlordane	57–74–9	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a- hexahydro-
p-Chloroaniline	106–47–8	Benzenamine, 4-chloro-
Chlorobenzene	108–90–7	Benzene, chloro-
Chlorobenzilate	510–15–6	Benzeneacetic acid, 4-chloro- -(4-chlorophenyl)- -hydroxy-, ethyl ester.
p-Chloro-m-cresol; 4-Chloro-3-methylphenol	59–50–7	Phenol, 4-chloro-3-methyl-
Chloroethane; Ethyl chloride	75–00–3	Ethane, chloro-
Chloroform; Trichloromethane	67–66–3	Methane, trichloro-
2-Chloronaphthalene	91–58–7	Naphthalene, 2-chloro-
2-Chlorophenol	95–57–8	Phenol, 2-chloro-
4-Chlorophenyl phenyl ether	7005–72–3	Benzene, 1-chloro-4-phenoxy-
Chloroprene	126–99–8	1,3-Butadiene, 2-chloro-
Chromium	(Total)	Chromium
Chrysene	218–01–9	Chrysene
Cobalt	(Total)	Cobalt
Copper	(Total)	Copper
m-Cresol; 3-Methylphenol	108–39–4	Phenol, 3-methyl-
o-Cresol; 2-Methylphenol	95–48–7	Phenol, 2-methyl-
p-Cresol; 4-Methylphenol	106–44–5	Phenol, 4-methyl-
Cyanide	57–12–5	Cyanide
2,4-D; 2,4-Dichlorophenoxyacetic acid	94–75–7	Acetic acid, (2,4-dichlorophenoxy)-
4,4′-DDD	72–54–8	Benzene 1,1′-(2,2-dichloroethylidene) bis[4-chloro-
4,4′-DDE	72–55–9	Benzene, 1,1′-(dichloroethenylidene) bis[4- chloro-
4,4′-DDT	50–29–3	Benzene, 1,1′-(2,2,2- trichloroethylidene) bis[4-chloro-
Diallate	2303–16–4	Carbamothioic acid, bis(1- methylethyl)-, S- (2,3-dichloro-2-propenyl) ester.
Dibenz[a,h]anthracene	53–70–3	Dibenz[a,h]anthracene
Dibenzofuran	132–64–9	Dibenzofuran
Dibromochloromethane;Chlorodibromomethane	124–48–1	Methane, dibromochloro-
1,2-Dibromo-3-chloropropane;	96–12–8	Propane, DBCP 1,2-dibromo-3-chloro-
1,2-Dibromoethane; Ethylene dibromide; EDB	106–93–4	Ethane, 1,2-dibromo-
Di-n-butyl phthalate	84–74–2	1,2-Benzenedicarboxylic acid, dibutyl ester
o-Dichlorobenzene; 1,2-Dichlorobenzene	95–50–1	Benzene, 1,2-dichloro-
m-Dichlorobenzene; 1,3-Dichlorobenzene	541–73–1	Benzene, 1,3-dichloro-
p-Dichlorobenzene; 1,4-Dichlorobenzene	106–46–7	Benzene, 1,4-dichloro-
3,3′-Dichlorobenzidine	91–94–1	[1,1′-Biphenyl]-4,4′- diamine, 3,3′-dichloro-
trans-1,4-Dichloro-2-butene	110–57–6	2-Butene, 1,4-dichloro-, (E)-
Dichlorodifluoromethane; CFC 12	75–71–8	Methane, dichlorodifluoro-
1,1-Dichloroethane; Ethyldidene chloride	75–34–3	Ethane, 1,1-dichloro-
1,2-Dichloroethane; Ethylene dichloride	107–06–2	Ethane, 1,2-dichloro-
1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	75–35–4	Ethene, 1,1-dichloro-
cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156–59–2	Ethene, 1,2-dichloro-(Z)-
trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene	156–60–5	Ethene, 1,2-dichloro-, (E)-
2,4-Dichlorophenol	120–83–2	Phenol, 2,4-dichloro-
2,6-Dichlorophenol	87–65–0	Phenol, 2,6-dichloro-
1,2-Dichloropropane	78–87–5	Propane, 1,2-dichloro-
1,3-Dichloropropane; Trimethylene dichloride	142–28–9	Propane, 1,3-dichloro-
2,2-Dichloropropane; Isopropylidene chloride	594–20–7	Propane, 2,2-dichloro-
1,1-Dichloropropene	563–58–6	1-Propene, 1,1- dichloro-
cis-1,3-Dichloropropene	10061–01–5	1-Propene, 1,3-dichloro-, (Z)-
trans-1,3-Dichloropropene	10061–02–6	1-Propene, 1,3-dichloro-, (E)-
Dieldrin	60–57–1	2,7:3,6-Dimethanonaphth [2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a- octahydro-, (1a*α2β, 2aα, 3β, 6β, 6aα, 7β,7aα*)-
Diethyl phthalate	84–66–2	1,2-Benzenedicarboxylic acid, diethyl ester
O,O-Diethyl O–2-pyrazinyl phosphorothioate; Thionazin	297–97–2	Phosphorothioic acid, O,O- diethyl O-pyrazinyl ester.
Dimethoate	60–51–5	Phosphorodithioic acid, O,O-dimethyl S-[2-(methylamino)-2-oxoethyl] ester
p-(Dimethylamino)azobenzene	60–11–7	Benzenamine, N,N-dimethyl-4-(phenylazo)-
7,12-Dimethylbenz[a]anthracene	57–97–6	Benz[a]anthracene, 7,12- dimethyl-
3,3′-Dimethylbenzidine	119–93–7	[1,1′-Biphenyl]-4,4′-diamine, 3,3′-dimethyl-
alpha, alpha-Dimethylphenethylamine	122–09–8	Benzeneethanamine,α, α-dimethyl-

Common name [1]	CAS RN [2]	Chemical abstracts service index name [3]
2,4-Dimethylphenol; m-Xylenol	105–67–9	Phenol, 2,4-dimethyl-
Dimethyl phthalate	131–11–3	1,2-Benzenedicarboxylic acid, dimethyl ester
m-Dinitrobenzene	99–65–0	Benzene, 1,3-dinitro-
4,6-Dinitro-o-cresol; 4,6-Dinitro-2-methylphenol	534–52–1	Phenol, 2-methyl-4,6-dinitro-
2,4-Dinitrophenol	51–28–5	Phenol, 2,4-dinitro-
2,4-Dinitrotoluene	121–14–2	Benzene, 1-methyl-2,4-dinitro-
2,6-Dinitrotoluene	606–20–2	Benzene, 2-methyl-1,3-dinitro-
Dinoseb; DNBP; 2-sec-Butyl-4,6-dinitrophenol	88–85–7	Phenol, 2-(1-methylpropyl)-4,6- dinitro-
Di-n-octyl phthalate	117–84–0	1,2-Benzenedicarboxylic acid, dioctyl ester
Diphenylamine	122–39–4	Benzenamine, N-phenyl-
Disulfoton	298–04–4	Phosphorodithioic acid, O,O- diethyl S-[2- (ethylthio)ethyl] ester
Endosulfan I	959–98–8	6,9-Methano-2,4,3-benzodiox- athiepin, 6,7,8,9,10,10-hexachloro- 1,5,5a,6,9,9a-hexahydro-, 3-oxide,
Endosulfan II	33213–65–9	6,9-Methano-2,4,3- benzodioxathiepin, 6,7,8,9,10,10-hexachloro- 1,5,5a,6,9,9a-hexahydro-, 3-oxide, (3α, 5aα, 6β, 9β, 9aα)-
Endosulfan sulfate	1031–07–8	6,9-Methano-2,4,3- benzodioxathiepin, 6,7,8,9,10,10-hexachloro- 1,5,5a,6,9,9a-hexahydro-, 3,3-dioxide
Endrin	72–20–8	2,7:3,6-Dimethanonaphth[2,3- b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a- octahydro-, (1aα, 2β, 2aβ, 3α, 6α, 6aβ, 7β, 7aα)-
Endrin aldehyde	7421–93–4	1,2,4-Methe nocyclo- penta[cd] pentalene- 5-carboxaldehyde,2,2a,3,3,4,7- hexa-chlorodecahydro-,(1α, 2β, 2aβ, 4β,4aβ,5β,6aβ,6bβ,7R*)-
Ethylbenzene	100–41–4	Benzene, ethyl-
Ethyl methacrylate	97–63–2	2-Propenoic acid, 2-methyl-, ethyl ester
Ethyl methanesulfonate	62–50–0	Methanesulfonic acid, ethyl ester
Famphur	52–85–7	Phosphorothioic acid, O-[4- [(dimethylamino)sulfonyl]pheny l]-O,O-dimethyl ester
Fluoranthene	206–44–0	Fluoranthene
Fluorene	86–73–7	9H–Fluorene
Heptachlor	76–44–8	4,7-Methano-1H-indene,1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-
Heptachlor epoxide	1024–57–3	2,5-Methano-2H-indeno[1,2- b]oxirene, 2,3,4,5,6,7,7-heptachloro-1a,1b,5,5a,6,6a,- hexahydro-,(1aα,1bβ,2α,5α,5aβ,6β,6aα)
Hexachlorobenzene	118–74–1	Benzene, hexachloro-
Hexachlorobutadiene	87–68–3	1,3-Butadiene, 1,1,2,3,4,4- hexachloro-
Hexachlorocyclopentadiene	77–47–4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-
Hexachloroethane	67–72–1	Ethane, hexachloro-
Hexachloropropene	1888–71–7	1-Propene, 1,1,2,3,3,3- hexachloro-
2-Hexanone; Methyl butyl ketone	591–78–6	2-Hexanone
Indeno(1,2,3-cd)pyrene	193–39–5	Indeno[1,2,3-cd]pyrene
Isobutyl alcohol	78–83–1	1-Propanol, 2-methyl-
Isodrin	465–73–6	1,4,5,8- Dimethanonaphthalene,1,2,3,4,1 0,10-hexachloro-1,4,4a,5,8,8a hexahydro-(1α,4α,4aβ,5β,8β,8aβ)-
Isophorone	78–59–1	2-Cyclohexen-1-one, 3,5,5- trimethyl-
Isosafrole	120–58–1	1,3-Benzodioxole, 5-(1-propenyl)-
Kepone	143–50–0	1,3,4-Metheno-2H-cyclobuta- [cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6- decachlorooctahydro-
Lead	(Total)	Lead
Mercury	(Total)	Mercury
Methacrylonitrile	126–98–7	2-Propenenitrile, 2-methyl-
Methapyrilene	91–80–5	1,2,Ethanediamine, N,N-dimethyl-N′-2- pyridinyl- N′-(2-thienylmethyl)-
Methoxychlor	72–43–5	Benzene, 1,1′- (2,2,2,trichloroethylidene)bis [4-methoxy-
Methyl bromide; Bromomethane	74–83–9	Methane, bromo-
Methyl chloride; Chloromethane	74–87–3	Methane, chloro-
3-Methylcholanthrene	56–49–5	Benz[j]aceanthrylene, 1,2- dihydro-3-methyl-
Methyl ethyl ketone; MEK; 2-Butanone	78–93–3	2-Butanone
Methyl iodide; Iodomethane	74–88–4	Methane, iodo-
Methyl methacrylate	80–62–6	2-Propenoic acid, 2-methyl-, methyl ester
Methyl methanesulfonate	66–27–3	Methanesulfonic acid, methyl ester
2-Methylnaphthalene	91–57–6	Naphthalene, 2-methyl-
Methyl parathion; Parathion methyl	298–00–0	Phosphorothioic acid, O,O-dimethyl
4-Methyl-2-pentanone; Methyl isobutyl ketone	108–10–1	2-Pentanone, 4-methyl-
Methylene bromide; Dibromomethane	74–95–3	Methane, dibromo-
Methylene chloride; Dichloromethane	75–09–2	Methane, dichloro-
Naphthalene	91–20–3	Naphthalene
1,4-Naphthoquinone	130–15–4	1,4-Naphthalenedione
1-Naphthylamine	134–32–7	1-Naphthalenamine
2-Naphthylamine	91–59–8	2-Naphthalenamine
Nickel	(Total)	Nickel

Common name [1]	CAS RN [2]	Chemical abstracts service index name [3]
o-Nitroaniline; 2-Nitroaniline	88–74–4	Benzenamine, 2-nitro-
m-Nitroaniline; 3-Nitroaniline	99–09–2	Benzenamine, 3-nitro-
p-Nitroaniline; 4-Nitroaniline	100–01–6	Benzenamine, 4-nitro-
Nitrobenzene	98–95–3	Benzene, nitro-
o-Nitrophenol; 2-Nitrophenol	88–75–5	Phenol, 2-nitro-
p-Nitrophenol; 4-Nitrophenol	100–02–7	Phenol, 4-nitro-
N-Nitrosodi-n-butylamine	924–16–3	1-Butanamine, N-butyl-N-nitroso-
N-Nitrosodiethylamine	55–18–5	Ethanamine, N-ethyl-N-nitroso-
N-Nitrosodimethylamine	62–75–9	Methanamine, N-methyl-N-nitroso-
N-Nitrosodiphenylamine	86–30–6	Benzenamine, N-nitroso-N-phenyl-
N-Nitrosodipropylamine; N-Nitroso-N-dipropylamine; Di-n-propylnitrosamine.	621–64–7	1-Propanamine, N-nitroso-N-propyl-
N-Nitrosomethylethalamine	10595–95–6	Ethanamine, N-methyl-N-nitroso-
N-Nitrosopiperidine	100–75–4	Piperidine, 1-nitroso-
N-Nitrosopyrrolidine	930–55–2	Pyrrolidine, 1-nitroso-
5-Nitro-o-toluidine	99–55–8	Benzenamine, 2-methyl-5-nitro-
Parathion	56–38–2	Phosphorothioic acid, O,O- diethyl-O-(4-nitrophenyl) ester
Pentachlorobenzene	608–93–5	Benzene, pentachloro-
Pentachloronitrobenzene	82–68–8	Benzene, pentachloronitro-
Pentachlorophenol	87–86–5	Phenol, pentachloro-
Phenacetin	62–44–2	Acetamide, N-(4-ethoxyphenyl)
Phenanthrene	85–01–8	Phenanthrene
Phenol	108–95–2	Phenol
p-Phenylenediamine	106–50–3	1,4-Benzenediamine
Phorate	298–02–2	Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl] ester
Polychlorinated biphenyls; PCBs	See Note 6	1,1′-Biphenyl, chloro derivatives
Pronamide	23950–58–5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-
Propionitrile; Ethyl cyanide	107–12–0	Propanenitrile
Pyrene	129–00–0	Pyrene
Safrole	94–59–7	1,3-Benzodioxole, 15-(2-propenyl)-
Selenium	(Total)	Selenium
Silver	(Total)	Silver
Silvex; 2,4,5-TP	93–72–1	Propanoic acid, 12-(2,4,5-trichlorophenoxy)-
Styrene	100–42–5	Benzene, ethenyl-
Sulfide	18496–25–8	Sulfide
2,4,5-T; 2,4,5-Trichlorophenoxyacetic acid	93–76–5	Acetic acid, (2,4,5-trichlorophenoxy)-
2,3,7,8-TCDD; 2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746–01–6	Dibenzo[b,e][1,4]dioxin, 2,3,7,8-tetrachloro-
1,2,4,5-Tetrachlorobenzene	95–94–3	Benzene, 1,2,4,5-tetrachloro-
1,1,1,2-Tetrachloroethane	630–20–6	Ethane, 1,1,1,2-tetrachloro-
1,1,2,2-Tetrachloroethane	79–34–5	Ethane, 1,1,2,2-tetrachloro-
Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127–18–4	Ethene, tetrachloro-
2,3,4,6-Tetrachlorophenol	58–90–2	Phenol, 2,3,4,6-tetrachloro-
Thallium	(Total)	Thallium
Tin	(Total)	Tin
Toluene	108–88–3	Benzene, methyl-
o-Toluidine	95–53–4	Benzenamine, 2-methyl-
Toxaphene	See Note 7	Toxaphene
1,2,4-Trichlorobenzene.	120–82–1	Benzene, 1,2,4-trichloro-
1,1,1-Trichloroethane; Methylchloroform	71–55–6	Ethane, 1,1,1-trichloro-
1,1,2-Trichloroethane	79–00–5	Ethane, 1,1,2-trichloro-
Trichloroethylene; Trichloroethene	79–01–6	Ethene, trichloro-
Trichlorofluoromethane; CFC–11	75–69–4	Methane, trichlorofluoro-
2,4,5-Trichlorophenol	95–95–4	Phenol, 2,4,5-trichloro-
2,4,6-Trichlorophenol	88–06–2	Phenol, 2,4,6-trichloro-
1,2,3-Trichloropropane	96–18–4	Propane, 1,2,3-trichloro-
O,O,O-Triethyl phosphorothioate	126–68–1	Phosphorothioic acid, O,O,O-triethyl ester
sym-Trinitrobenzene	99–35–4	Benzene, 1,3,5-trinitro-
Vanadium	(Total)	Vanadium
Vinyl acetate	108–05–4	Acetic acid, ethenyl ester
Vinyl chloride; Chloroethene	75–01–4	Ethene, chloro-
Xylene (total)	See Note 8	Benzene, dimethyl-
Zinc	(Total)	Zinc

[1] Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

[2] Chemical Abstracts Service registry number. Where ''Total'' is entered, all species in the ground water that contain this element are included.

[3] CAS index names are those used in the 9th Cumulative Index.

[4] This substance is often called Bis(2-chloroisopropyl) ether, the name Chemical Abstracts Service applies to its noncommercial isomer, Propane, 2,2″-oxybis[2-chloro-(CAS RN 39638–32–9).

[5] Chlordane: This entry includes alpha-chlordane (CAS RN 5103–71–9), beta-chlordane (CAS RN 5103–74–2), gamma-chlordane (CAS RN 5566–34–7), and constituents of chlordane (CAS RN 57–74–9 and CAS RN 12789–03–6).

[6] Polychlorinated biphenyls (CAS RN 1336–36–3); this category contains congener chemicals, including constituents of Aroclor-1016 (CAS RN 12674–11–2), Aroclor-1221 (CAS RN 11104–28–2), Aroclor-1232 (CAS RN 11141–16–5), Aroclor-1242 (CAS RN 53469–21–9), Aroclor-1248 (CAS RN 12672–29–6), Aroclor-1254 (CAS RN 11097–69–1), and Aroclor-1260 (CAS RN 11096–82–5).

[7] Toxaphene: This entry includes congener chemicals contained in technical toxaphene (CAS RN 8001–35–2), *i.e.*, chlorinated camphene.

[8] Xylene (total): This entry includes o-xylene (CAS RN 96–47–6), m-xylene (CAS RN 108–38–3), p-xylene (CAS RN 106–42–3), and unspecified xylenes (dimethylbenzenes) (CAS RN 1330–20–7).

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

7. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart B—Definitions

8. Section 260.11 is amended by revising paragraphs (a)(1) and (2) and (a)(11) to read as follows:

§ 260.11 References.

(a) * * *

(1) ''ASTM Standard Test Methods for Flash Point of Liquids by Small Scale Closed-Cup Apparatus,'' ASTM Standard D 3278–96, available from American Society for Testing and Materials, at 100 Barr Harbor Drive, West Conshohocken, PA 19428, *http://www.astm.org,* or from Global Engineering Documents, 15 Iverness Way East, Englewood, CO 80112, 1–800–854–7179, *http://global.ihs.com.*

(2) ''ASTM Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester,'' ASTM Standard D 93–99c, available from American Society for Testing and Materials, at 100 Barr Harbor Drive, West Conshohocken, PA 19428, *http://www.astm.org,* or from Global Engineering Documents, 15 Iverness Way East, Englewood, CO 80112, 1–800–854–7179, *http://global.ihs.com.*

* * * * *

(11) The following methods found in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, Third Edition, as grouped and identified by date (found in bottom right corner of method) and promulgated updated version: Methods 0010, 0020, 0030, and 1320, dated September 1986 and in the Basic Manual; Methods 1311 and 1330, dated July 1992 and in Update I; Method 1312 dated September 1994 and in Update II; Methods 0011, 0023, 0031, 0040, 0050, 0051, 0060, 0061, 3542, and 5041, dated December 1996 and in Update III; Method 9071 dated April 1998 and in Update IIIA; Methods 1010, 1020, 1110, 1310, 9010, 9012, 9040, 9045, 9060, 9070, and 9095, dated [to be determined at publication of final rule] and in Update IIIB. The Third Edition of SW–846 and Updates I, II, IIA, IIB, III, and IIIB (document number 955–001–00000–1) are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800. Update IIIA is available through EPA's Methods Information Communication Exchange (MICE) Service. MICE can be contacted by phone at (703) 676–4690. Copies of the Third Edition of SW–846 and its updates are also available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605–6000 or (800) 553–6847. The above methods are also available on the Internet at *http://www.epa.gov/SW–846/.* Copies of the methods incorporated by reference may be inspected at the Library, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

* * * * *

Subpart C—Rulemaking Petitions

9. Section 260.21 is amended by revising paragraph (d) to read as follows:

§ 260.21 Petitions for equivalent testing or analytical methods.

* * * * *

(d) If the Administrator amends the regulations to permit use of a new testing method, the method will be incorporated by reference in § 260.11 and added to ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, U.S. Environmental Protection Agency, Office of Solid Waste, Washington, DC 20460.

10. Section 260.22 is amended by revising paragraph (d)(1)(i) to read as follows:

§ 260.22 Petitions to amend part 261 to exclude a waste produced at a particular facility.

* * * * *

(d) * * *

(1) * * *

(i) Does not contain the constituent or constituents (as defined in Appendix VII of part 261 of this chapter) that caused the Administrator to list the waste, by using appropriate methods such as those found in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, or other reliable sources; or

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

11. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

Subpart A—General

12. Section 261.3 is amended by revising paragraph (a)(2)(v) introductory text to read as follows:

§ 261.3 Definition of hazardous waste.

(a) * * *

(2) * * *

(v) Rebuttable presumption for used oil. Used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using appropriate methods such as those found in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, or other reliable sources to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of part 261 of this chapter).

* * * * *

Subpart C—Characteristics of Hazardous Waste

13. Section 261.21 is amended by revising paragraph (a)(1) to read as follows:

§ 261.21 Characteristic of ignitability.

(a) * * *

(1) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume and has flash point less than 60 °C (140 °F), as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D 93–99c (incorporated by reference, see § 260.11) which is used and referenced by Method 1010 of ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846 (incorporated by reference, see § 260.11), or a Small Scale Closed-Cup Apparatus, using the test method specified in ASTM Standard D 3278–96 (incorporated by reference, see § 260.11) which is used and referenced by Method 1020 of ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846 (incorporated by reference, see § 260.11).

* * * * *

14. Section 261.22 is amended by revising paragraph (a)(2) introductory text to read as follows:

§ 261.22 Characteristic of corrosivity.

(a) * * *

(2) It is a liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (0.250 inch) per year at a test temperature of 55 °C (130 °F) as determined by the test method specified in NACE (National Association of Corrosion Engineers) Standard TM–01–69 as standardized as Method 1110 in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, and as incorporated by reference in § 260.11 of this chapter.

* * * * *

Subpart D—Lists of Hazardous Wastes

15. Section 261.35 is amended by revising paragraphs (b)(2)(iii)(A) and (B) to read as follows:

§ 261.35 Deletion of certain hazardous waste codes following equipment cleaning and replacement.

* * * * *

(b) * * *

(2) * * *

(iii) * * *

(A) Rinses must be tested by using appropriate methods such as Method 8290 of ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'' (EPA Publication SW–846) or appropriate methods from other reliable sources.

(B) ''Not detected'' means at or below the lower method calibration limit (MCL) in SW–846 Method 8290, Table 1. Other appropriate methods from other reliable sources may be used provided that these criteria are met.

* * * * *

16. Section 261.38 is amended by revising paragraph (c)(7) introductory text to read as follows:

§ 261.38 Comparable/Syngas Fuel Exclusion.

* * * * *

(c) * * *

(7) Waste analysis plans. The generator of a comparable/syngas fuel shall develop and follow a written waste analysis plan which describes the procedures for sampling and analysis of the hazardous waste to be excluded. The waste analysis plan should be developed in accordance with appropriate guidance such as found in the applicable sections of the ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'' (EPA Publication SW–846) or other reliable sources. The plan shall be followed and retained at the facility excluding the waste.

* * * * *

17. Appendix III to part 261 is revised to read as follows:

Appendix III to Part 261—Chemical Analysis Test Methods

Note: Examples of appropriate analytical procedures to determine whether a sample contains a given toxic constituent are provided in Chapter Two, ''Choosing the Correct Procedure,'' found in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846. Prior to final sampling and analysis method selection, the individual should consult the specific section or method described in SW–846, if used, for additional guidance on which methods should be employed for a specific sample analysis situation.

16. Appendix IX to part 261 is amended in Table 1:

a. In the entry for ''Aptus, Inc, Coffeyville, Kansas,'' under the ''Waste description'' column, by revising paragraphs (2), (3), and (4);

b. In the entry for ''Arkansas Department of Pollution Control and Ecology, Vertac Superfund site, Jacksonville, Arkansas,'' under the ''Waste description'' column, by revising the introductory text of paragraph (1) and by revising paragraph (3)(C);

c. In the entry for ''Bethlehem Steel Corporation, Sparrows Point, Maryland,'' under the ''Waste description'' column, by revising the introductory text of paragraph (1);

d. In the entry for ''BMW Manufacturing Corporation, Greer, South Carolina,'' under the ''Waste description'' column, by revising the introductory text of paragraph (2);

e. In the entry for ''DuraTherm, Incorporated, San Leon, Texas,'' under the ''Waste description'' column, by revising the introductory text of paragraph (3);

f. In the entry for ''Eastman Chemical Company, Longview, Texas,'' under the ''Waste description'' column, by revising the introductory text of paragraph (3);

g. In the entry for ''Envirite of Pennsylvania (formerly Envirite Corporation), York, Pennsylvania, under the ''Waste description'' column, by revising paragraph (2);

h. In the entry for ''Geological Reclamation Operations and Waste Systems, Inc., Morrisville, PA,'' under the ''Waste description'' column by revising the introductory text of paragraph (1);

i. In the entry for ''McDonnel Douglas Corporation, Tulsa, Oklahoma,'' under the ''Waste description'' column by revising paragraph (3);

j. In the entry for ''Occidental Chemical, Ingleside, Texas,'' under the ''Waste description'' column, by revising the introductory text of paragraph (3);

k. In the entry for ''Rhodia, Houston, Texas,'' under the ''Waste description'' column, by revising the introductory text of paragraph (3);

l. In the entry for ''Syntex Agribusiness, Springfield, MO,'' under the ''Waste description'' column, by revising paragraphs (2), (3), (4), (5), and (6);

m. In the entry for ''Texas Eastman, Longview, Texas,'' under the ''Waste description'' column, by revising paragraph 3;

n. In the entry for ''Tyco Printed Circuit Group, Melbourne Division, Melbourne, Florida,'' under the ''Waste description'' column, by revising the introductory text of paragraph 1.

The revisions read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Aptus, Inc.	Coffeyville, Kansas	* * * * * (1) * * *

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(2) A minimum of four grab samples must be taken from each hopper (or other container) of kiln residue generated during each 24 hour run; all grabs collected during a given 24 hour run must then be composited to form one composite sample. A minimum of four grab samples must also be taken from each hopper (or other container) of spray dryer/baghouse residue generated during each 24 hour run; all grabs collected during a given 24 hour run must then be composited to form one composite sample. Prior to the disposal of the residues from each 24 hour run, a TCLP leachate test must be performed on these composite samples and the leachate analyzed for the TC toxic metals, nickel, and cyanide. If arsenic, chromium, lead or silver TC leachate test results exceed 1.6 ppm, barium levels exceed 32 ppm, cadmium or selenium levels exceed 0.3 ppm, mercury levels exceed 0.07 ppm, nickel levels exceed 10 ppm, or cyanide levels exceed 6.5 ppm, the wastes must be retreated to achieve these levels or must be disposed in accordance with subtitle C of RCRA. Analyses must be performed according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). (3) Aptus must generate, prior to the disposal of the residues, verification data from each 24 hour run for each treatment residue (*i.e.*, kiln residue, spray dryer/baghouse residue) to demonstrate that the maximum allowable treatment residue concentrations listed below are not exceeded. Samples must be collected as specified in Condition (2). Analyses must be performed according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). Any residues which exceed any of the levels listed below must be retreated or must be disposed of as hazardous. Kiln residue and spray dryer/ baghouse residue must not exceed the following levels: Aldrin—0.015 ppm; Benzene—9.7 ppm; Benzo(a)pyrene—0.43 ppm; Benzo(b)fluoranthene—1.8 ppm; Chlordane—0.37 ppm; Chloroform—5.4 ppm; Chrysene—170 ppm; Dibenz(a,h)anthracene—0.083 ppm; 1,2-Dichloroethane—4.1 ppm; Dichloromethane—2.4 ppm; 2,4-Dichlorophenol—480 ppm; Dichlorvos—260 ppm; Disulfaton—23 ppm; Endosulfan I—310 ppm; Fluorene—120 ppm; Indeno(1,2,3,cd)-pyrene—330 ppm; Methyl parathion—210 ppm; Nitrosodiphenylamine—130 ppm; Phenanthrene—150 ppm; Polychlorinated biphenyls—0.31 ppm; Tetrachloroethylene—59 ppm; 2,4,5-TP (silvex)—110 ppm; 2,4,6-Trichlorophenol—3.9 ppm. (4) Aptus must generate, prior to disposal of residues, verification data from each 24 hour run for each treatment residue (*i.e.*, kiln residue, spray dryer/baghouse residue) to demonstrate that the residues do not contain tetra-, penta-, or hexachlorodibenzo-p-dioxins or furans at levels of regulatory concern. Samples must be collected as specified in Condition (2). The TCDD equivalent levels for the solid residues must be less than 5 ppt. Any residues with detected dioxins or furans in excess of this level must be retreated or must be disposed of as acutely hazardous. For this analysis, Aptus must use appropriate methods such as Method 8290 found in EPA Publication SW–846, a high resolution gas chromatography and high resolution mass spectroscopy (HRGC/HRMS) analytical method, or use appropriate methods found in other reliable sources. For tetra- and penta-chlorinated dioxin and furan homologs, the maximum practical quantitation limit must not exceed 15 ppt for the solid residues. For hexachlorinated dioxin and furan homologs, the maximum practical quantitation limit must not exceed 37 ppt for the solid residues. * * * * *
Arkansas Department of Pollution Control and Ecology.	Vertac Superfund site, Jacksonville, Arkansas.	* * * * * (1) *Testing:* Sample collection and analyses (including quality control (QC) procedures) must be performed according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). * * * * * (3) * * *

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(C) Chlorinated dioxins and furans: 2,3,7,8-Tetrachlorodibenzo-p-dioxin equivalents, 4 x 10^7 ppm. The petitioned by-product must be analyzed for the tetra-, penta-, hexa-, and heptachlorodibenzo-p-dioxins, and the tetra-, penta-, hexa-, and heptachlorodibenzofurans to determine the 2,3,7,8-tetra-chlorodibenzo-p- dioxin equivalent concentration. The analysis must be conducted using appropriate methods such as SW–846 Method 8290, a high resolution gas chromatography/high resolution mass spectrometry method, or other appropriate methods found in other reliable sources, and must achieve practical quantitation limits of 15 parts per trillion (ppt) for the tetra- and penta-homologs, and 37 ppt for the hexa- and hepta-homologs. * * * * *
Bethlehem Steel Corporation	Sparrows Point, Maryland ..	* * * * * (1) *Testing:* Sample collection and analyses (including quality control (QC) procedures) must be performed according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). If EPA judges the stabilization process to be effective under the conditions used during the initial verification testing, BSC may replace the testing required in Condition (1)(A) with the testing required in Condition (1)(B). BSC must continue to test as specified in Condition (1)(A) until and unless notified by EPA in writing that testing in Condition (1)(A) may be replaced by Condition (1)(B) (to the extent directed by EPA). * * * * *
BMW Manufacturing Corporation	Greer, South Carolina	* * * * * (2) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that representative samples of the BMW Sludge meet the delisting levels in Condition (1). * * * * *
DuraTherm, Incorporated	San Leon, Texas	* * * * * (3) *Verification Testing Requirements:* DuraTherm must perform sample collection and analyses, including quality control procedures, according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). If EPA judges the process to be effective under the operating conditions used during the initial verification testing, DuraTherm may replace the testing required in Paragraph (3)(A) with the testing required in Paragraph (3)(B). DuraTherm must continue to test as specified in Paragraph (3)(A) until and unless notified by EPA in writing that testing in Paragraph (3)(A) may be replaced by Paragraph (3)(B). * * * * *
Eastman Chemical Company	Longview, Texas	* * * * * (3) *Verification Testing Requirements:* Eastman must perform sample collection and analyses, including quality control procedures, according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). After completion of the initial verification period, Eastman may replace the testing required in Condition (3)(A) with the testing required in Condition (3)(B). Eastman must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing in Condition (3)(A) may be replaced by Condition (3)(B). * * * * *
Envirite of Pennsylvania (formerly Envirite Corporation).	York, Pennsylvania	* * * * *

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(2) Each batch of treatment residue must be tested for leachable cyanide. If the leachable cyanide levels (using the EP Toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be retreated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. * * * * *
Geological Reclamation Operations and Systems, Inc..	Morrisville, Pennsylvania	* * * * * (1) *Testing:* Sample collection and analyses, including quality control (QC) procedures, must be performed according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). * * * * *
McDonnell Douglas Corporation	Tulsa, Oklahoma	* * * * * (3) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). McDonnell Douglas must stabilize the previously unstabilized waste from the bottom portion of the northwest lagoon of the surface impoundment (which was closed as a landfill) using fly ash, kiln dust or similar accepted materials in batches of 500 cubic yards or less. McDonnell Douglas must analyze one composite sample from each batch of 500 cubic yards or less. A minimum of four grab samples must be taken from each waste pile (or other designated holding area) of stabilized waste generated from each batch run. Each composited batch sample must be analyzed, prior to disposal of the waste in the batch represented by that sample, for constituents listed in Condition (1). There are no verification testing requirements for the stabilized wastes in the upper portions of the northwest lagoon, the entire northeast lagoon, and the entire south lagoon of the surface impoundments which were closed as a landfill. * * * * *
Occidental Chemical	Ingleside, Texas	* * * * * (3) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). If EPA judges the incineration process to be effective under the operating conditions used during the initial verification testing, Occidental Chemical may replace the testing required in Condition (3)(A) with the testing required in Condition (3)(B). Occidental Chemical must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing in Condition (3)(A) may be replaced by Condition (3)(B). * * * * *
Rhodia	Houston, Texas	* * * * * (3) *Verification Testing Requirements:* Rhodia must perform sample collection and analyses, including quality control procedures, according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). If EPA judges the process to be effective under the operating conditions used during the initial verification testing, Rhodia may replace the testing required in Condition (3)(A) with the testing required in Condition (3)(B). Rhodia must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing in Condition (3)(A) may be replaced by Condition (3)(B). * * * * *
Syntex Agribusiness	Springfield, MO	* * * * *

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(2) Four grab samples of wastewater must be composited from the volume of filtered wastewater collected after each eight hour run and, prior to disposal the composite samples must be analyzed for the EP toxic metals, nickel, and cyanide. If arsenic, chromium, lead, and silver EP leachate test results exceed 0.61 ppm; barium levels exceed 12 ppm; cadmium and selenium levels exceed 0.12 ppm; mercury levels exceed 0.02 ppm; nickel levels exceed 6.1 ppm; or cyanide levels exceed 2.4 ppm, the wastewater must be retreated to achieve these levels or must be disposed in accordance with all applicable hazardous waste regulations. Analyses must be performed according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). (3) One grab sample must be taken from each drum of kiln and cyclone ash generated during each eight hour run; all grabs collected during a given eight hour run must then be composited to form one composite sample. A composite sample of four grab samples of the separator sludge must be collected at the end of each eight hour run. Prior to the disposal of the residues from each eight hour run, an EP leachate test must be performed on these composite samples and the leachate analyzed for the EP toxic metals, nickel, and cyanide (using a distilled water extraction for the cyanide extraction) to demonstrate that the following maximum allowable treatment residue concentrations listed below are not exceeded. Analyses must be performed according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). Any residues which exceed any of the levels listed below must be retreated to achieve these levels or must be disposed in accordance with all applicable hazardous waste regulations. Maximum Allowable Solids Treatment Residue EP Leachate Concentrations (mg/L), Arsenic—1.6, Barium—32, Cadmium—0.32, Chromium—1.6, Lead—1.6, Mercury—0.065, Nickel—16, Selenium—0.32, Silver—1.6, Cyanide—6.5. (4) If Syntex stabilizes any of the kiln and cyclone ash or separator sludge, a Portland cement-type stabilization process must be used and Syntex must collect a composite sample of four grab samples from each batch of stabilized waste. An MEP leachate test must be performed on these composite samples and the leachate analyzed for the EP toxic metals, nickel, and cyanide (using a distilled water extraction for the cyanide leachate analysis) to demonstrate that the maximum allowable treatment residue concentrations listed in Condition (3) are not exceeded during any run of the MEP extraction. Analyses must be performed according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). Any residues which exceed any of the levels listed in Condition (3) must be retreated to achieve these levels or must be disposed in accordance with all applicable hazardous waste regulations. (If the residues are stabilized, the analyses required in this condition supercede the analyses required in Condition (3).)

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(5) Syntex must generate, prior to disposal of residues, verification data from each eight hour run from each treatment residue (*i.e.*, kiln and cyclone ash, separator sludge, and filtered wastewater) to demonstrate that the maximum allowable treatment residue concentrations listed below are not exceeded. Samples must be collected as specified in Conditions (2) and (3). Analyses must be performed according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). Any solid or liquid residues which exceed any of the levels listed below must be retreated to achieve these levels or must be disposed in accordance with Subtitle C of RCRA. Maximum Allowable Wastewater Concentrations (ppm): Benz(a)anthracene—1 x 10^{-4}; Benzo(a)pyrene—4 x 10^{-5}; Benzo(b)fluoranthene—2 x 10^{-4}; Chloroform—0.07; Chrysene—0.002; Dibenz(a,h)anthracene—9 x 10^{-6}; 1,2-Dichloroethane—0.06; Dichloromethane—0.06; Indeno(1,2,3-cd)pyrene—0.002; Polychlorinated biphenyls—1 x 10^{-4}; 1,2,4,5-Tetrachlorobenzene—0.13; 2,3,4,6-Tetrachlorophenol—12; Toluene—120; Trichloroethylene—0.04; 2,4,5-Trichlorophenol—49; 2,4,6-Trichlorophenol—0.02; Maximum Allowable Solid Treatment Residue Concentrations (ppm): Benz(a)anthracene—1.1; Benzo(a)pyrene—0.43; Benzo(b)fluoranthene—1.8; Chloroform—5.4; Chrysene—170; Dibenz(a,h)anthracene—0.083; Dichloromethane—2.4; 1,2-Dichloroethane—4.1; Indeno(1,2,3-cd)pyrene—330; Polychlorinated biphenyls—0.31; 1,2,4,5-Tetrachlorobenzene—720; Trichloroethylene—6.6; 2,4,6-Trichlorophenol—3.9. (6) Syntex must generate, prior to disposal of residues, verification data from each eight hour run for each treatment residue (*i.e.*, kiln and cyclone ash, separator sludge, and filtered wastewater) to demonstrate that the residues do not contain tetra-, penta-, or hexachlorodibenzo-p-dioxins or furans at levels of regulatory concern. Samples must be collected as specified in Conditions (2) and (3). The TCDD equivalent levels for wastewaters must be less than 2 ppq and less than 5 ppt for the solid treatment residues. Any residues with detected dioxins or furans in excess of these levels must be retreated or must be disposed as acutely hazardous. For this analysis, Syntex must use appropriate methods, such as SW–846 Method 8290, a high resolution gas chromatography and high resolution mass spectroscopy (HRGC/HRMS) analytical method, or use appropriate methods found in other reliable sources. For tetra- and pentachloronated dioxin and furan homologs, the maximum practical quantitation limit must not exceed 15 ppt for solids and 120 ppq for wastewaters. For hexachlorinated homologs, the maximum practical quantitation limit must not exceed 37 ppt for solids and 300 ppq for wastewaters. * * * * *
Texas Eastman	Longview, Texas	* * * * * 3. *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). If EPA judges the incineration process to be effective under the operating conditions used during the initial verification testing described in Paragraph 4 below, Texas Eastman may replace the testing required in Paragraph 4 with the testing required in Paragraph 5 below. Texas Eastman must, however, continue to test as specified in Paragraph 4 until notified by EPA in writing that testing in Paragraph 4 may be replaced by the testing described in Paragraph 5. * * * * *
Tyco Printed Circuit Group, Melbourne Division.	Melbourne, Florida	* * * * *

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(1) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures must be performed according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that representative samples of the Tyco Sludge meet the delisting levels in Condition (3). * * * * *

17. Appendix IX to part 261 is amended in Table 2:

a. In the entry for ''Bethlehem Steel Corp., Steelton, PA,'' under the ''Waste description'' column by revising paragraphs (1) and (2);

b. In the entry for ''Bethlehem Steel Corp., Johnston, PA,'' under the ''Waste description'' column by revising paragraphs (1) and (2);

c. In the entry for ''BF Goodrich Intermediates Company, Inc., Calvert City, Kentucky,'' under the ''Waste description'' column by revising the introductory paragraph and by revising paragraphs (1)(B) and (3);

d. In the entry for ''CF&I Steel Corporation, Pueblo, Colorado,'' under the ''Waste description'' column by revising paragraphs (1) and (2);

e. In the entry for ''Chaparral Steel Midlothian L.P., Midlothian, Texas,'' under the ''Waste description'' column by revising paragraph (1) and the introductory text of paragraph (3);

f. In the entry for ''Conversion Systems, Inc., Horsham, Pennsylvania,'' under the ''Waste description'' column by revising the introductory text of paragraph (1);

g. In the entry for ''DOE–RL, Richland, Washington,'' under the ''Waste description'' column by revising the introductory text of paragraph (1) and by revising paragraph (3);

h. In the entry for ''Envirite of Pennsylvania (formerly Envirite Corporation), York, Pennsylvania, under the ''Waste description'' column, by revising paragraph (2);

i. In the entry for ''Heritage Environmental Services, LLC, at the Nucor Steel Facility, Crawfordsville, Indiana,'' under the ''Waste Description'' column by revising paragraph (2);

j. In the entry for ''Marathon Oil Co., Texas City, Texas,'' under the ''Waste description'' column by revising the introductory text of paragraph (1);

k. In the entry for ''Occidental Chemical Corp, Muscle Shoals Plant, Sheffield, Alabama,'' under the ''Waste description'' column by revising the introductory paragraph and by revising paragraphs (1)(A) and (3);

l. In the entry for ''Occidental Chemical Corporation, Delaware City, Delaware,'' under the ''Waste description'' column by revising the introductory paragraph and by revising paragraph (1)(A), the introductory text of paragraph (2) and by revising paragraph (3);

m. In the entry for ''Oxy Vinyls, Deer Park, Texas,'' under the ''Waste description'' column by revising the introductory text of paragraph (3);

n. In the entry for ''Roanoke Electric Steel Corp., Roanoke, Virginia,'' under the ''Waste description'' column by revising paragraphs (1)(A), (1)(B), and (2);

o. In the entry for ''USX Steel Corporation, USS Division, Southworks Plant, Gary Works, Chicago, Illinois,'' under the ''Waste description'' column by revising the introductory text of paragraph (1) and by revising paragraphs (1)(A) and (2).

The revisions read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

* * * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
Bethlehem Steel Corp	Steelton, PA	* * * * * (1) *Testing:* (A) *Initial Testing:* During the first four weeks of operation of the full-scale treatment system, Bethlehem must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel and cyanide (using distilled water in the cyanide extractions). Analyses must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). Bethlehem must report the analytical test data obtained during this initial period no later than 90 days after the treatment of the first full-scale batch.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(B) *Subsequent Testing:* Bethlehem must collect representative grab samples from every treated batch of CSEAFD generated daily and composite all of the grab samples to produce a weekly composite sample. Bethlehem then must analyze each weekly composite sample for the EP leachate concentrations of all the EP toxic metals and nickel. Analyses must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). The analytical data, including all quality control information, must be compiled and maintained on site for a minimum of three years. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Pennsylvania. (2) *Delisting Levels:* If the EP extract concentrations resulting from the testing in condition (1)(A) or (1)(B) for chromium, lead, arsenic, or silver exceed 0.315 mg/L; for barium exceeds 6.3 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceeds 0.0126 mg/l; for nickel exceeds 3.15 mg/l; or for cyanide exceeds 4.42 mg/L; the waste must either be re-treated or managed and disposed in accordance with subtitle C of RCRA. * * * * *
Bethlehem Steel Corp	Johnstown, PA	* * * * * (1) *Testing:* (A) *Initial Testing:* During the first four weeks of operation of the full-scale treatment system, Bethlehem must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel, and cyanide (using distilled water in the cyanide extractions). Analyses must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). Bethlehem must report the analytical test data obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. (B) *Subsequent Testing:* Bethlehem must collect representative grab samples from every treated batch of CSEAFD generated daily and composite all of the grab samples to produce a weekly composite sample. Bethlehem then must analyze each weekly composite sample for the EP leachate concentrations of all the EP toxic metals and nickel. Analyses must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). The analytical data, including all quality control information, must be compiled and maintained on site for a minimum of three years. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Pennsylvania. (2) If the EP extract concentrations resulting from the testing in condition (1)(A) or (1)(B) for chromium, lead, arsenic, or silver exceed 0.315 mg/l; for barium exceed 6.3 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceed 0.0126 mg/l, for nickel exceed 3.15 mg/l; or for cyanide exceed 4.42 mg/l; the waste must either be retreated until it meets these levels or managed and disposed in accordance with subtitle C of RCRA. * * * * *
BF Goodrich Intermediates Company, Inc.	Calvert City, Kentucky	* * * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		Brine purification muds and saturator insolubles (EPA, Hazardous Waste No. K071) after August 18, 1989. This exclusion is conditional upon the collection and submission of data obtained from BFG's full-scale treatment system because BFG's original data was based on data presented by another petitioner using an identical treatment process. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment facility is in operation, BFG must implement a testing program. All sampling and analyses (including quality control procedures) must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). This testing program must meet the following conditions for the exclusion to be valid: (1) * * * (B) Collect representative grab samples from every batch of treated mercury brine purification muds and treated saturator insolubles on a daily basis and composite the grab samples to produce two separate weekly composite samples (one of the treated mercury brine muds and one of the treated saturator insolubles). Prior to disposal of the treated batches, two weekly composite samples must be analyzed for the EP leachate concentrations of all the EP toxic metals (except mercury), nickel, and cyanide (using distilled water in the cyanide extractions). BFG must report the analytical test data, including all quality control data, obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. (2) * * * (3) If, under condition (1) or (2), the EP leachate concentrations for chromium, lead, arsenic, or silver exceed 0.316 mg/l; for barium exceeds 6.31 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceeds 0.0126 mg/l, for nickel exceeds 3.16 mg/l; or for cyanide exceeds 4.42 mg/l; the waste must either be retreated until it meets these levels or managed and disposed of in accordance with subtitle C of RCRA. * * * * *
CF&I Steel Corporation	Pueblo, Colorado	* * * * * (1) *Testing:* (A) *Initial Testing:* During the first four weeks of operation of the full-scale treatment system, CF&I must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel, and cyanide (using distilled water in the cyanide extractions). Analyses must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). CF&I must report the analytical test data obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. (B) *Subsequent Testing:* CF&I must collect representative grab samples from every treated batch of CSEAFD generated daily and composite all of the grab samples to produce a weekly composite sample. CF&I then must analyze each weekly composite sample for the EP leachate concentrations of all of the EP toxic metals and nickel. Analyses must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). The analytical data, including all quality control information, must be compiled and maintained on site for a minimum of three years. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Colorado. (2) *Delisting levels:* If the EP extract concentrations determined in conditions (1)(A) or (1)(B) for chromium, lead, arsenic, or silver exceed 0.315 mg/l; for barium exceeds 6.3 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceeds 0.0126 mg/l; for nickel exceeds 3.15 mg/l; or for cyanide exceeds 4.42 mg/l; the waste must either be retreated or managed and disposed in accordance with Subtitle C of RCRA. * * * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
Chaparral Steel Midlothian, L.P	Midlothian, Texas	* * * * * (1) *Delisting Levels:* All concentrations for the constituent total lead in the approximately 2,500 cubic yards (500,000 gallons) per calender year of raw leachate from Landfill No. 3, storm water from the baghouse area, and other K061 wastewaters that is transferred from the storage tank to nonhazardous management must not exceed 0.69 mg/l (ppm). Constituents must be measured in the waste by appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). (3) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). Chaparral Steel must analyze one composite sample from each batch of untreated wastewater transferred from the hazardous waste storage tank to non-hazardous waste management. Each composited batch sample must be analyzed, prior to non-hazardous management of the waste in the batch represented by that sample, for the constituent lead as listed in Condition (1). Chaparral may treat the waste as specified in Condition (2). If EPA judges the treatment process to be effective during the operating conditions used during the initial verification testing, Chaparral Steel may replace the testing requirement in Condition (3)(A) with the testing requirement in Condition (3)(B). Chaparral must continue to test as specified in (3)(A) until and unless notified by EPA or designated authority that testing in Condition (3)(A) may be replaced with by Condition (3)(B). * * * * *
Conversion Systems, Inc	Horsham, Pennsylvania	* * * * * (1) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). * * * * *
DOE–RL	Richland, Washington	* * * * * (1) *Testing:* Sample collection and analyses (including quality control (QC) procedures) must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). If EPA judges the treatment process to be effective under the operating conditions used during the initial verification testing, DOE may replace the testing required in Condition (1)(A) with the testing required in Condition (1)(B). DOE must continue to test as specified in Condition (1)(A) until notified by EPA in writing that testing in Condition (1) (A) may be replaced by Condition (1)(B). * * * * * (2) * * * (3) *Delisting Levels:* All total constituent concentrations in the waste samples must be measured using appropriate methods such as those found in ''Test Methods for Evaluating Solid Waste: Physical/Chemical Methods,'' U.S. EPA Publication SW–846, or other reliable sources (with the exception of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). All total constituent concentrations must be equal to or less than the following levels (ppm): *Inorganic Constituents:* Ammonium—10.0; Antimony—0.06; Arsenic—0.5; Barium—20.0; Beryllium—0.04; Cadmium—0.05; Chromium—1.0; Cyanide—2.0; Fluoride—40.0; Lead—0.15; Mercury—0.02; Nickel—1.0; Selenium—0.5; Silver—2.0; Vanadium—2.0; Zinc—100.0.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		Organic Constituents: Acetone—40.0; Benzene—0.05; Benzyl alcohol—100.0; 1-Butyl alcohol—40.0; Carbon tetrachloride—0.05; Chlorobenzene—1.0; Chloroform—0.1; Cresol—20.0; 1,4-Dichlorobenzene—0.75; 1,2-Dichloroethane—0.05; 1,1-Dichloroethylene—0.07; Di-n-octyl phthalate—7.0; Hexachloroethane—0.06; Methyl ethyl ketone—200.0; Methyl isobutyl ketone—30.0; Naphthalene—10.0; Tetrachloroethylene—0.05; Toluene—10.0; Tributyl phosphate—0.2; 1,1,1-Trichloroethane—2.0; 1,1,2-Trichloroethane—0.05; Trichloroethylene—0.05; Vinyl Chloride—0.02. * * * * *
Envirite of Pennsylvania (formerly Envirite Corporation).	York, Pennsylvania	* * * * * (2) Each batch of treatment residue must be tested for leachable cyanide. If the leachable cyanide levels (using the EP Toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be re-treated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. * * * * *
Heritage Environmental Services, LLC, at the Nucor Steel facility.	Crawfordsville, Indiana	* * * * * (2) *Verification Testing:* On a monthly basis, Heritage or Nucor must analyze two samples of the waste using the TCLP, SW–846 Method 1311, with an extraction fluid of ph 12 ± 0.05 standard units and for the mercury determinative analysis of the leachate using an appropriate method such as Method 7470 found in EPA Publication SW–846, or use an appropriate method found in other reliable sources. The constituent concentrations measured must be less then the delisting levels established in Paragraph (1). * * * * *
Marathon Oil Co	Texas City, TX	* * * * * (1) *Testing:* Sample collection and analyses (including quality control (QC) procedures) must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). If EPA judges the treatment process to be effective under the operating conditions used during the initial verification testing, Marathon may replace the testing required in Condition (1)(A) with the testing required in Condition (1)(B). Marathon must continue to test as specified in Condition (1)(A), including testing for organics in Conditions (3)(B) and (3)(C), until and unless notified by EPA in writing that testing in Condition (1)(A) may be replaced by Condition (1)(B), or that testing for organics may be terminated as described in (1)(C) (to the extent directed by EPA). * * * * *
Occidental Chemical Corp., Muscle Shoals Plant.	Sheffield, Alabama	* * * * * Retorted wastewater treatment sludge from the mercury cell process in chlorine production (EPA Hazardous Waste No. K106) after September 19, 1989. This exclusion is conditional upon the submission of data obtained from Occidental's full-scale retort treatment system because Occidental's original data were based on a pilot-scale retort system. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment facility is in operation, Occidental must implement a testing program. All sampling and analyses (including quality control procedures) must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). This testing program must meet the following conditions for the exclusion to be valid: (1) * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(A) Collect representative grab samples from every batch of retorted material and composite the grab samples to produce a weekly composite sample. The weekly composite samples, prior to disposal or recycling, must be analyzed for the EP leachate concentrations of all the EP toxic metals (except mercury), nickel, and cyanide (using distilled water in the cyanide extractions). Occidental must report the analytical test data, including all quality control data, obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. * * * (2) * * * (3) If, under condition (1) or (2), the EP leachate concentrations for chromium, lead, arsenic, or silver exceed 1.616 mg/l; for barium exceeds 32.3 mg/l; for cadmium or selenium exceed 0.323 mg/l; for mercury exceeds 0.065 mg/l, for nickel exceeds 16.15 mg/l; or for cyanide exceeds 22.61 mg/l; the waste must either be retreated until it meets these levels or managed and disposed of in accordance with subtitle C of RCRA. * * * * *
Occidental Chemical Corporation	Delaware City, Delaware	* * * * * Sodium chloride treatment muds (NaCl–TM), sodium chloride saturator cleanings (NaCl–SC), and potassium chloride treatment muds (KCl–TM) (all classified as EPA Hazardous Waste No. K071) generated at a maximum combined rate (for all three wastes) of 1,018 tons per year. This exclusion was published on April 29, 1991 and is conditioned upon the collection of data from Occidental's full-scale brine treatment system because Occidental's request for exclusion was based on data from a laboratory-scale brine treatment process. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment system is in operation, Occidental must implement a testing program for the petitioned waste. All sampling and analyses (including quality control (QC) procedures) must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). This testing program must meet the following conditions for the exclusion to be valid: (1) * * * (A) Collect representative grab samples from each batch of the three treated wastestreams (sodium chloride saturator cleanings (NaCl–SC), sodium chloride treatment muds (NaCl–TM) and potassium chloride treatment muds (KCl–TM)) on an as generated basis and composite the samples to produce three separate weekly composite samples (of each type of K071 waste). The three weekly composite samples, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals (except mercury), nickel, and cyanide (using distilled water in the cyanide extractions). Occidental must report the waste volumes produced and the analytical test data, including all quality control data, obtained during this initial period, no later than 90 days after the treatment of the first full-scale batch. * * * (2) *Subsequent Testing:* After the first four weeks of full-scale treatment operations, Occidental must do the following; all sampling and analyses (including quality control procedures) must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution): * * * (3) If, under conditions (1) or (2), the EP leachate concentrations for chromium, lead, arsenic, or silver exceed 0.77 mg/l; for barium exceeds 15.5 mg/l; for cadmium or selenium exceed 0.16 mg/l; for mercury exceeds 0.031 mg/l, or for nickel or total cyanide exceeds 10.9 mg/l; the waste must either be retreated or managed and disposed of in accordance with all applicable hazardous waste regulations. * * * * *
Oxy Vinyls	Deer Park, Texas	* * * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(3) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). If EPA judges the incineration process to be effective under the operating conditions used during the initial verification testing, Oxy Vinyls may replace the testing required in Condition (3)(A) with the testing required in Condition (3)(B). Oxy Vinyls must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing in Condition (3)(A) may be replaced by Condition (3)(B). * * * * *
Roanoke Electric Steel Corp	Roanoke, VA	* * * * * (1) * * * (A) *Initial Testing:* During the first four weeks of operation of the full-scale treatment system, Roanoke must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel and cyanide (using distilled water in the cyanide extractions). Analyses must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). Roanoke must report the analytical test data obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. (B) *Subsequent Testing:* Roanoke must collect representative grab samples from every treated batch of CSEAFD generated daily and composite all of the grab samples to produce a weekly composite sample. Roanoke then must analyze each weekly composite sample for all of the EP toxic metals and nickel. Analyses must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). The analytical data, including all quality control information, must be compiled and maintained on site for a minimum of three years. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Virginia. (2) *Delisting levels:* If the EP extract concentrations for chromium, lead, arsenic, or silver exceed 0.315 mg/l; for barium exceeds 6.3 mg/l; for cadmium or selenium exceed 0.63 mg/l; for mercury exceeds 0.0126 mg/l, for nickel exceeds 3.15 mg/l, or for cyanide exceeds 1.26 mg/l; the waste must either be re-treated or managed and disposed in accordance with subtitle C of RCRA. * * * * *
USX Steel Corporation, USS Division, Southworks Plant, Gary Works.	Chicago, Illinois	* * * * * (1) *Testing:* Sample collection and analyses (including quality control (QC) procedures) must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). (A) *Initial Testing:* During the first four weeks of operation of the full-scale treatment system, USX must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel, and cyanide (using distilled water in the cyanide extractions). USX must report the analytical test data, including quality control information, obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(2) *Delisting levels:* If the EP extract concentrations for chromium, lead, arsenic, or silver exceed 0.315 mg/l; for barium exceeds 6.3 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceeds 0.0126 mg/l; for nickel exceeds 3.15 mg/l; or for cyanide exceeds 4.42 mg/l, the waste must either be re-treated until it meets these levels or managed and disposed in accordance with subtitle C of RCRA.

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

20. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

Subpart AA—Air Emissions Standards for Process Vents

21. Section 264.1034 is amended by revising paragraphs (c)(1)(ii), (c)(1)(iv), (d)(1)(iii) and (f) to read as follows:

§ 264.1034 Test methods and procedures.

* * * * *

(c) * * *

(1) * * *

(ii) Method 18 or Method 25A in 40 CFR part 60, appendix A, for organic content. If Method 25A is used, the organic HAP used as the calibration gas must be the single organic HAP representing the largest percent by volume of the emissions. The use of Method 25A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

* * * * *

(iv) Total organic mass flow rates shall be determined by the following equation:

(A) For sources utilizing Method 18.

$$E_h = Q_{2sd}\left\{\sum_{i=1}^{n} C_i MW_i\right\}[0.0416]\left[10^{-6}\right]$$

Where:

E_h = Total organic mass flow rate, kg/h;

Q_{2sd} = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

n = Number of organic compounds in the vent gas;

C_i = Organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Method 18;

MW_i = Molecular weight of organic compound i in the vent gas, kg/kg-mol;

0.0416 = Conversion factor for molar volume, kg-mol/m3 (@ 293 K and 760 mm Hg);

10^{-6} = Conversion from ppm

(B) For sources utilizing Method 25A.

$E_h = (Q)(C)(MW)(0.0416)(10^{-6})$

Where:

E_h = Total organic mass flow rate, kg/h;

Q = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

C = Organic concentration in ppm, dry basis, as determined by Method 25A;

MW = Molecular weight of propane, 44;

0.0416 = Conversion factor for molar volume, kg-mol/m3 (@ 293 K and 760 mm Hg);

10^{-6} = Conversion from ppm.

* * * * *

(d) * * *

(1) * * *

(iii) Each sample shall be analyzed and the total organic concentration of the sample shall be computed using Method 9060 (incorporated by reference under § 260.11) of ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846; or analyzed for individual organic constituents by using appropriate methods such as Method 8260 of EPA Publication SW–846, or using appropriate methods from other reliable sources.

* * * * *

(f) When an owner or operator and the Regional Administrator do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous waste with organic concentrations of at least 10 ppmw based on knowledge of the waste, the dispute may be resolved by using appropriate methods such as Method 8260 of ''Test Methods for Evaluating Solid Waste'' (EPA Publication SW–846) or by using appropriate methods from other reliable sources.

Subpart BB—Air Emission Standards for Equipment Leaks

22. Section 264.1063 is amended by revising paragraph (d)(2) to read as follows:

§ 264.1063 Test methods and procedures.

* * * * *

(d) * * *

(2) Method 9060 (incorporated by reference under § 260.11) of ''Test Methods for Evaluating Solid Waste,'' EPA Publication SW–846, or analyzed for its individual organic constituents by using appropriate methods such as Method 8260 of EPA Publication SW–846 or using appropriate methods from other reliable sources; or

* * * * *

23. Appendix IX to part 264 is revised as follows:

Appendix IX to Part 264—Ground-Water Monitoring List

GROUND-WATER MONITORING LIST

Common name [1]	CAS RN [2]	Chemical abstracts service index name [3]
Acenaphthene	83–32–9	Acenaphthylene, 1,2-dihydro-
Acenaphthylene	208–96–8	Acenaphthylene
Acetone	67–64–1	2-Propanone
Acetophenone	98–86–2	Ethanone, 1-phenyl-
Acetonitrile; Methyl cyanide	75–05–8	Acetonitrile
2-Acetylaminofluorene; 2-AAF	53–96–3	Acetamide, N-9H-fluoren-2-yl-
Acrolein	107–02–8	2-Propenal

GROUND-WATER MONITORING LIST—Continued

Common name [1]	CAS RN [2]	Chemical abstracts service index name [3]
Acrylonitrile	107–13–1	2-Propenenitrile
Aldrin	309–00–2	1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro- (1α,4α, 4aβ,5α,8α,8aβ)-
Allyl chloride	107–05–1	1-Propene, 3-chloro-
4-Aminobiphenyl	92–67–1	[1,1′-Biphenyl]-4-amine
Aniline	62–53–3	Benzenamine
Anthracene	120–12–7	Anthracene
Antimony	(Total)	Antimony
Aramite	140–57–8	Sulfurous acid, 2-chloroethyl 2-[4-(1,1-dimethylethyl)phenoxy]-1-methylethyl ester
Arsenic	(Total)	Arsenic
Barium	(Total)	Barium
Benzene	71–43–2	Benzene
Benzo[a]anthracene; Benzanthracene	56–55–3	Benz[a]anthracene
Benzo[b]fluoranthene	205–99–2	Benz[e]acephenanthrylene
Benzo[k]fluoranthene	207–08–9	Benzo[k]fluoranthene
Benzo[ghi]perylene	191–24–2	Benzo[ghi]perylene
Benzo[a]pyrene	50–32–8	Benzo[a]pyrene
Benzyl alcohol	100–51–6	Benzenemethanol
Beryllium	(Total)	Beryllium
alpha-BHC	319–84–6	Cyclohexane, 1,2,3,4,5,6-hexachloro-,(1α,2α,3β,4α,5β,6β)-
beta-BHC	319–85–7	Cyclohexane, 1,2,3,4,5,6-hexachloro-,(1α,2β,3α,4β,5α,6β)-
delta-BHC	319–86–8	Cyclohexane, 1,2,3,4,5,6-hexachloro-,(1α,2α,3α,4β,5α,6β)-
gamma-BHC; Lindane	58–89–9	Cyclohexane, 1,2,3,4,5,6-hexachloro-,(1α,2α,3β,4α,5α,6β)-
Bis(2-chloroethoxy)methane	111–91–1	Ethane, 1,1′-[methylenebis (oxy)]bis [2-chloro-
Bis(2-chloroethyl)ether	111–44–4	Ethane, 1,1′-oxybis[2-chloro-
Bis(2-chloro-1-methylethyl) ether; 2,2′-Dichlorodiisopropyl ether	108–60–1	Propane, 2,2′-oxybis[1-chloro-
Bis(2-ethylhexyl) phthalate	117–81–7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl)ester
Bromodichloromethane	75–27–4	Methane, bromodichloro-
Bromoform; Tribromomethane	75–25–2	Methane, tribromo-
4-Bromophenyl phenyl ether	101–55–3	Benzene, 1-bromo-4-phenoxy-
Butyl benzyl phthalate; Benzyl butyl phthalate	85–68–7	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester
Cadmium	(Total)	Cadmium
Carbon disulfide	75–15–0	Carbon disulfide
Carbon tetrachloride	56–23–5	Methane, tetrachloro-
Chlordane	57–74–9	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a- hexahydro-
p-Chloroaniline	106–47–8	Benzenamine, 4-chloro-
Chlorobenzene	108–90–7	Benzene, chloro-
Chlorobenzilate	510–15–6	Benzeneacetic acid, 4-chloro-α-(4-chlorophenyl)-α-hydroxy-, ethyl ester
p-Chloro-m-cresol	59–50–7	Phenol, 4-chloro-3-methyl-
Chloroethane; Ethyl chloride	75–00–3	Ethane, chloro-
Chloroform	67–66–3	Methane, trichloro-
2-Chloronaphthalene	91–58–7	Naphthalene, 2-chloro-
2-Chlorophenol	95–57–8	Phenol, 2-chloro-
4-Chlorophenyl phenyl ether	7005–72–3	Benzene, 1-chloro-4-phenoxy-
Chloroprene	126–99–8	1,3-Butadiene, 2-chloro-
Chromium	(Total)	Chromium
Chrysene	218–01–9	Chrysene
Cobalt	(Total)	Cobalt
Copper	(Total)	Copper
m-Cresol	108–39–4	Phenol, 3-methyl-
o-Cresol	95–48–7	Phenol, 2-methyl-
p-Cresol	106–44–5	Phenol, 4-methyl-
Cyanide	57–12–5	Cyanide
2,4-D; 2,4-Dichlorophenoxyacetic acid	94–75–7	Acetic acid, (2,4-dichlorophenoxy)-
4,4′-DDD	72–54–8	Benzene 1,1′-(2,2-dichloroethylidene) bis[4-chloro-
4,4′-DDE	72–55–9	Benzene, 1,1′-(dichloroethenylidene) bis[4-chloro-
4,4′-DDT	50–29–3	Benzene, 1,1′-(2,2,2-trichloroethylidene) bis[4-chloro-
Diallate	2303–16–4	Carbamothioic acid, bis(1-methylethyl)-, S- (2,3- dichloro-2-propenyl) ester
Dibenz[a,h]anthracene	53–70–3	Dibenz[a,h]anthracene
Dibenzofuran	132–64–9	Dibenzofuran
Dibromochloromethane; Chlorodibromomethane	124–48–1	Methane, dibromochloro-
1,2-Dibromo-3-chloropropane; DBCP	96–12–8	Propane, 1,2-dibromo-3-chloro-
1,2-Dibromoethane; Ethylene dibromide	106–93–4	Ethane, 1,2-dibromo-
Di-n-butyl phthalate	84–74–2	1,2-Benzenedicarboxylic acid, dibutyl ester
o-Dichlorobenzene	95–50–1	Benzene, 1,2-dichloro-
m-Dichlorobenzene	541–73–1	Benzene, 1,3-dichloro-
p-Dichlorobenzene	106–46–7	Benzene, 1,4-dichloro-
3,3′-Dichlorobenzidine	91–94–1	[1,1′-Biphenyl]-4,4′-diamine, 3,3′-dichloro-

GROUND-WATER MONITORING LIST—Continued

Common name [1]	CAS RN [2]	Chemical abstracts service index name [3]
trans-1,4-Dichloro-2-butene	110–57–6	2-Butene, 1,4-dichloro-, (E)-
Dichlorodifluoromethane	75–71–8	Methane, dichlorodifluoro-
1,1-Dichloroethane	75–34–3	Ethane, 1,1-dichloro-
1,2-Dichloroethane; Ethylene dichloride	107–06–2	Ethane, 1,2-dichloro-
1,1-Dichloroethylene; Vinylidene chloride	75–35–4	Ethene, 1,1-dichloro-
trans-1,2-Dichloroethylene	156–60–5	Ethene, 1,2-dichloro-, (E)-
2,4-Dichlorophenol	120–83–2	Phenol, 2,4-dichloro-
2,6-Dichlorophenol	87–65–0	Phenol, 2,6-dichloro-
1,2-Dichloropropane	78–87–5	Propane, 1,2-dichloro-
cis-1,3-Dichloropropene	10061–01–5	1-Propene, 1,3-dichloro-, (Z)-
trans-1,3-Dichloropropene	10061–02–6	1-Propene, 1,3-dichloro-, (E)-
Dieldrin	60–57–1	2,7:3,6-Dimethanonaphth [2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aα,2β,2aα,3β,6β;,6aα,7β,7aα)-
Diethyl phthalate	84–66–2	1,2-Benzenedicarboxylic acid, diethyl ester
O,O-Diethyl O-2-pyrazinyl phosphorothioate; Thionazin	297–97–2	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester
Dimethoate	60–51–5	Phosphorodithioic acid, O,O-dimethyl S-[2-(methylamino)-2-oxoethyl] ester
p-(Dimethylamino)azobenzene	60–11–7	Benzenamine, N,N-dimethyl-4- (phenylazo)-
7,12-Dimethylbenz[a]anthracene	57–97–6	Benz[a]anthracene, 7,12- dimethyl-
3,3′-Dimethylbenzidine	119–93–7	[1,1′-Biphenyl]-4,4′-diamine, 3,3′-dimethyl-
alpha, alpha-Dimethylphenethylamine	122–09–8	Benzeneethanamine, α,α-dimethyl-
2,4-Dimethylphenol	105–67–9	Phenol, 2,4-dimethyl-
Dimethyl phthalate	131–11–3	1,2-Benzenedicarboxylic acid, dimethyl ester
m-Dinitrobenzene	99–65–0	Benzene, 1,3-dinitro-
4,6-Dinitro-o-cresol	534–52–1	Phenol, 2-methyl-4,6-dinitro-
2,4-Dinitrophenol	51–28–5	Phenol, 2,4-dinitro-
2,4-Dinitrotoluene	121–14–2	Benzene, 1-methyl-2,4-dinitro-
2,6-Dinitrotoluene	606–20–2	Benzene, 2-methyl-1,3-dinitro-
Dinoseb; DNBP; 2-sec-Butyl-4,6-dinitrophenol	88–85–7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-
Di-n-octyl phthalate	117–84–0	1,2-Benzenedicarboxylic acid, dioctyl ester
1,4-Dioxane	123–91–1	1,4-Dioxane
Diphenylamine	122–39–4	Benzenamine, N-phenyl-
Disulfoton	298–04–4	Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl]ester
Endosulfan I	959–98–8	6,9-Methano-2,4,3- benzodioxathiepin, 6,7,8,9,10,10-hexachloro- 1,5,5a,6,9,9a-hexahydro-, 3-oxide, (3α,5aβ,6α,9α,9aβ)-
Endosulfan II	33213–65–9	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro- 1,5,5a,6,9,9a-hexahydro-, 3-oxide, (3α,5aα,6β,9β,9aα)-
Endosulfan sulfate	1031–07–8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3,3-dioxide
Endrin	72–20–8	2,7:3,6-Dimethanonaphth[2,3- b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aα,2β,2aβ,3α,6α, 6aβ,7β, 7aα)-
Endrin aldehyde	7421–93–4	1,2,4-Methenocyclopenta[cd]pentalene-5-carboxaldehyde,2,2a,3,3,4,7-hexachlorodecahydro-,(1α,2β,2aβ,4β,4aβ,5β,6aβ, 6bβ,7R*)-
Ethylbenzene	100–41–4	Benzene, ethyl-
Ethyl methacrylate	97–63–2	2-Propenoic acid, 2-methyl-, ethyl ester
Ethyl methanesulfonate	62–50–0	Methanesulfonic acid, ethyl ester
Famphur	52–85–7	Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl]pheny l]-O,O-dimethyl ester
Fluoranthene	206–44–0	Fluoranthene
Fluorene	86–73–7	9H-Fluorene
Heptachlor	76–44–8	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-
Heptachlor epoxide	1024–57–3	2,5-Methano-2H-indeno[1,2-b]oxirene, 2,3,4,5,6,7,7-heptachloro-1a,1b,5,5a,6,6a,-hexahydro-, (1aα,1bβ,2α,5α,5aβ,6β,6aα)
Hexachlorobenzene	118–74–1	Benzene, hexachloro-
Hexachlorobutadiene	87–68–3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-
Hexachlorocyclopentadiene	77–47–4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-
Hexachloroethane	67–72–1	Ethane, hexachloro-
Hexachlorophene	70–30–4	Phenol, 2,2′-methylenebis[3,4,6-trichloro-
Hexachloropropene	1888–71–7	1-Propene, 1,1,2,3,3,3-hexachloro-
2-Hexanone	591–78–6	2-Hexanone
Indeno(1,2,3-cd)pyrene	193–39–5	Indeno[1,2,3-cd]pyrene
Isobutyl alcohol	78–83–1	1-Propanol, 2-methyl-
Isodrin	465–73–6	1,4,5,8-Dimethanonaphthalene,1,2,3,4,1 0,10- hexachloro-1,4,4a,5,8,8a hexahydro-(1α,4α,4aβ,5β,8β,8aβ)-
Isophorone	78–59–1	2-Cyclohexen-1-one, 3,5,5-trimethyl-

GROUND-WATER MONITORING LIST—Continued

Common name [1]	CAS RN [2]	Chemical abstracts service index name [3]
Isosafrole	120–58–1	1,3-Benzodioxole, 5-(1-propenyl)-
Kepone	143–50–0	1,3,4-Metheno-2H-cyclobuta- [cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6- decachlorooctahydro-
Lead	(Total)	Lead
Mercury	(Total)	Mercury
Methacrylonitrile	126–98–7	2-Propenenitrile, 2-methyl-
Methapyrilene	91–80–5	1,2,Ethanediamine, N,N-dimethyl-N′-2- pyridinyl- N′-(2-thienylmethyl)-
Methoxychlor	72–43–5	Benzene, 1,1′-(2,2,2,trichloroethylidene)bis [4-methoxy-
Methyl bromide; Bromomethane	74–83–9	Methane, bromo-
Methyl chloride; Chloromethane	74–87–3	Methane, chloro-
3-Methylcholanthrene	56–49–5	Benz[j]aceanthrylene, 1,2- dihydro-3-methyl-
Methylene bromide; Dibromomethane	74–95–3	Methane, dibromo-
Methylene chloride; Dichloromethane	75–09–2	Methane, dichloro-
Methyl ethyl ketone; MEK	78–93–3	2-Butanone
Methyl iodide; Iodomethane	74–88–4	Methane, iodo-
Methyl methacrylate	80–62–6	2-Propenoic acid, 2-methyl-, methyl ester
Methyl methanesulfonate	66–27–3	Methanesulfonic acid, methyl ester
2-Methylnaphthalene	91–57–6	Naphthalene, 2-methyl-
Methyl parathion; Parathion methyl	298–00–0	Phosphorothioic acid, O,O- dimethyl O-(4-nitrophenyl) ester
4-Methyl-2-pentanone; Methyl isobutyl ketone	108–10–1	2-Pentanone, 4-methyl-
Naphthalene	91–20–3	Naphthalene
1,4-Naphthoquinone	130–15–4	1,4-Naphthalenedione
1-Naphthylamine	134–32–7	1-Naphthalenamine
2-Naphthylamine	91–59–8	2-Naphthalenamine
Nickel	(Total)	Nickel
o-Nitroaniline	88–74–4	Benzenamine, 2-nitro-
m-Nitroaniline	99–09–2	Benzenamine, 3-nitro-
p-Nitroaniline	100–01–6	Benzenamine, 4-nitro-
Nitrobenzene	98–95–3	Benzene, nitro-
o-Nitrophenol	88–75–5	Phenol, 2-nitro-
p-Nitrophenol	100–02–7	Phenol, 4-nitro-
4-Nitroquinoline 1-oxide	56–57–5	Quinoline, 4-nitro-, 1-oxide
N-Nitrosodi-n-butylamine	924–16–3	1-Butanamine, N-butyl-N-nitroso-
N-Nitrosodiethylamine	55–18–5	Ethanamine, N-ethyl-N-nitroso-
N-Nitrosodimethylamine	62–75–9	Methanamine, N-methyl-N-nitroso-
N-Nitrosodiphenylamine	86–30–6	Benzenamine, N-nitroso-N-phenyl-
N-Nitrosodipropylamine; Di-n-propylnitrosamine	621–64–7	1-Propanamine, N-nitroso-N- propyl-
N-Nitrosomethylethylamine	10595–95–6	Ethanamine, N-methyl-N-nitroso-
N-Nitrosomorpholine	59–89–2	Morpholine, 4-nitroso-
N-Nitrosopiperidine	100–75–4	Piperidine, 1-nitroso-
N-Nitrosopyrrolidine	930–55–2	Pyrrolidine, 1-nitroso-
5-Nitro-o-toluidine	99–55–8	Benzenamine, 2-methyl-5-nitro-
Parathion	56–38–2	Phosphorothioic acid, O,O- diethyl-O-(4-nitrophenyl) ester
Polychlorinated biphenyls; PCBs	See Note 4	1,1′-Biphenyl, chloro derivatives
Polychlorinated dibenzo-p-dioxins; PCDDs	See Note 5	Dibenzo[b,e][1,4]dioxin, chloro derivatives
Polychlorinated dibenzofurans; PCDFs	See Note 6	Dibenzofuran, chloro derivatives
Pentachlorobenzene	608–93–5	Benzene, pentachloro-
Pentachloroethane	76–01–7	Ethane, pentachloro-
Pentachloronitrobenzene	82–68–8	Benzene, pentachloronitro-
Pentachlorophenol	87–86–5	Phenol, pentachloro-
Phenacetin	62–44–2	Acetamide, N-(4-ethoxyphenyl)
Phenanthrene	85–01–8	Phenanthrene
Phenol	108–95–2	Phenol
p-Phenylenediamine	106–50–3	1,4-Benzenediamine
Phorate	298–02–2	Phosphorodithioic acid, O,O- diethyl S- [(ethylthio)methyl] ester
2-Picoline	109–06–8	Pyridine, 2-methyl-
Pronamide	23950–58–5	Benzamide, 3,5-dichloro-N-(1,1- dimethyl-2-propynyl)-
Propionitrile; Ethyl cyanide	107–12–0	Propanenitrile
Pyrene	129–00–0	Pyrene
Pyridine	110–86–1	Pyridine
Safrole	94–59–7	1,3-Benzodioxole, 5-(2- propenyl)-
Selenium	(Total)	Selenium
Silver	(Total)	Silver
Silvex; 2,4,5-TP	93–72–1	Propanoic acid, 2-(2,4,5- trichlorophenoxy)-
Styrene	100–42–5	Benzene, ethenyl-
Sulfide	18496–25–8	Sulfide
2,4,5-T;2,4,5 Trichlorophenoxyacetic acid	93–76–5	Acetic acid, (2,4,5-2,4,5-trichlorophenoxy)-
2,3,7,8-TCDD; 2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746–01–6	Dibenzo[b,e][1,4]dioxin, 2,3,7,8-tetrachloro-
1,2,4,5-Tetrachlorobenzene	95–94–3	Benzene, 1,2,4,5-tetrachloro-
1,1,1,2-Tetrachloroethane	630–20–6	Ethane, 1,1,1,2-tetrachloro-

GROUND-WATER MONITORING LIST—Continued

Common name [1]	CAS RN [2]	Chemical abstracts service index name [3]
1,1,2,2-Tetrachloroethane	79–34–5	Ethane, 1,1,2,2-tetrachloro-
Tetrachloroethylene; Perchloroethylene; Tetrachloroethene	127–18–4	Ethene, tetrachloro-
2,3,4,6-Tetrachlorophenol	58–90–2	Phenol, 2,3,4,6-tetrachloro-
Tetraethyl dithiopyrophosphate; Sulfotepp	3689–24–5	Thiodiphosphoric acid ([(HO)$_2$ P(S)]$_2$ O), tetraethyl ester
Thallium	(Total)	Thallium
Tin	(Total)	Tin
Toluene	108–88–3	Benzene, methyl-
o-Toluidine	95–53–4	Benzenamine, 2-methyl-
Toxaphene	8001–35–2	Toxaphene
1,2,4-Trichlorobenzene	120–82–1	Benzene, 1,2,4-trichloro-
1,1,1-Trichloroethane; Methylchloroform	71–55–6	Ethane, 1,1,1-trichloro-
1,1,2-Trichloroethane	79–00–5	Ethane, 1,1,2-trichloro-
Trichloroethylene; Trichloroethene	79–01–6	Ethene, trichloro-
Trichlorofluoromethane	75–69–4	Methane, trichlorofluoro-
2,4,5-Trichlorophenol	95–95–4	Phenol, 2,4,5-trichloro-
2,4,6-Trichlorophenol	88–06–2	Phenol, 2,4,6-trichloro-
1,2,3-Trichloropropane	96–18–4	Propane, 1,2,3-trichloro-
O,O,O-Triethyl phosphorothioate	126–68–1	Phosphorothioic acid, O,O,O- triethyl ester
sym-Trinitrobenzene	99–35–4	Benzene, 1,3,5-trinitro-
Vanadium	(Total)	Vanadium
Vinyl acetate	108–05–4	Acetic acid, ethenyl ester
Vinyl chloride	75–01–4	Ethene, chloro-
Xylene (total)	1330–20–7	Benzene, dimethyl-
Zinc	(Total)	Zinc

[1] Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.
[2] Chemical Abstracts Service registry number. Where ''Total'' is entered, all species in the ground water that contain this element are included.
[3] CAS index names are those used in the 9th Cumulative Index.
[4] Polychlorinated biphenyls (CAS RN 1336–36–3); this category contains congener chemicals, including constituents of Aroclor-1016 (CAS RN 12674–11–2), Aroclor-1221 (CAS RN 11104–28–2), Aroclor-1232 (CAS RN 11141–16–5), Aroclor-1242 (CAS RN 53469–21–9), Aroclor-1248 (CAS RN 12672–29–6), Aroclor-1254 (CAS RN 11097–69–1), and Aroclor-1260 (CAS RN 11096–82–5).
[5] This category contains congener chemicals, including tetrachlorodibenzo-p-dioxins (see also 2,3,7,8–TCDD), pentachlorodibenzo-p-dioxins, and hexachlorodibenzo-p-dioxins.
[6] This category contains congener chemicals, including tetrachlorodibenzofurans, pentachlorodibenzofurans, and hexachlorodibenzofurans.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

24. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936 and 6937, unless otherwise noted.

Subpart AA—Air Emission Standards for Process Vents

25. Section 265.1034 is amended by revising paragraphs (c)(1)(ii), (c)(1)(iv), (d)(1)(iii) and (f) to read as follows:

§ 265.1034 Test methods and procedures.

* * * * *

(c) * * *

(1) * * *

(ii) Method 18 or Method 25A in 40 CFR part 60, appendix A, for organic content. If Method 25A is used, the organic HAP used as the calibration gas must be the single organic HAP representing the largest percent by volume of the emissions. The use of Method 25A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

* * * * *

(iv) Total organic mass flow rates shall be determined by the following equation:

(A) For sources utilizing Method 18.

$$E_h = Q_{2sd}\left\{\sum_{i=1}^{n} C_i MW_i\right\}[0.0416]\left[10^{-6}\right]$$

Where:

E_h = Total organic mass flow rate, kg/h;

Q_{2sd} = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

n = Number of organic compounds in the vent gas;

C_i = Organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Method 18;

MW_i = Molecular weight of organic compound i in the vent gas, kg/kg-mol;

0.0416 = Conversion factor for molar volume, kg-mol/m3 (@ 293 K and 760 mm Hg);

10^{-6} Conversion from ppm

(B) For sources utilizing Method 25A.

$E_h = (Q)(C)(MW)(0.0416)(10^{-6})$

Where:

E_h = Total organic mass flow rate, kg/h;

Q = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

C = Organic concentration in ppm, dry basis, as determined by Method 25A;

MW = Molecular weight of propane, 44;

0.0416 = Conversion factor for molar volume, kg-mol/m3 (@ 293 K and 760 mm Hg);

10^{-6} = Conversion from ppm.

* * * * *

(d) * * *

(1) * * *

(iii) Each sample shall be analyzed and the total organic concentration of the sample shall be computed using Method 9060 (incorporated by reference under § 260.11) of ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846; or analyzed for its individual organic constituents by using appropriate methods such as Method 8260 of EPA Publication SW–846, or using appropriate methods from other reliable sources.

* * * * *

(f) When an owner or operator and the Regional Administrator do not agree on

whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous waste with organic concentrations of at least 10 ppmw based on knowledge of the waste, the dispute may be resolved using an appropriate method such as Method 8260 of ''Test Methods for Evaluating Solid Waste'' (EPA Publication SW–846) or using appropriate methods from other reliable sources.

Subpart BB—Air Emission Standards for Equipment Leaks

26. Section 265.1063 is amended by revising paragraph (d)(2) to read as follows:

§ 265.1063 Test methods and procedures.

* * * * *

(d) * * *

(2) Method 9060 (incorporated by reference under § 260.11) of ''Test Methods for Evaluating Solid Waste,'' EPA Publication SW–846 or analyzed for its individual organic constituents by using appropriate methods such as Method 8260 of EPA Publication SW–846 or using appropriate methods from other reliable sources; or

* * * * *

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

27. Section 265.1081 is amended by revising the definition ''Waste stabilization process'' to read as follows:

§ 265.1081 Definitions.

* * * * *

Waste stabilization process means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095 (Paint Filter Liquids Test) in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, as incorporated by reference in § 260.11. A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are ''waste fixation'' or ''waste solidification.'' This does not include the adding of absorbent materials to the surface of a waste, without mixing, agitation, or subsequent curing, to absorb free liquid.

28. Section 265.1084 is amended by revising paragraphs (a)(3)(ii)(C), (a)(3)(iii), (b)(3)(ii)(C), (b)(3)(iii), and (c)(3)(i) to read as follows:

§ 265.1084 Waste determination procedures.

(a) * * *

(3) * * *

(ii) * * *

(C) All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous waste stream are collected such that a minimum loss of organics occurs throughout the sample collection and handling process, and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained on-site in the facility operating records. An example of an acceptable sampling plan includes a plan incorporating sample collection and handling procedures in accordance with the guidance found in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, or in Method 25D in 40 CFR part 60, appendix A.

* * * * *

(iii) Analysis. Each collected sample shall be prepared and analyzed in accordance with Method 25D in 40 CFR part 60, appendix A, or using one or more other appropriate methods from other reliable sources. If Method 25D in 40 CFR part 60, appendix A is not used, then one or more methods should be chosen that are appropriate to ensure that the waste determination accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3] at 25 degrees Celsius. Examples of other methods from other reliable sources which might be appropriate include Method 8260 or 8270 in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846; or Method 624, 625, 1624, or 1625 of 40 CFR part 136, appendix A. At the owner or operator's discretion, the owner or operator may adjust test data obtained by any appropriate method to discount any contribution to the total volatile organic concentration that is a result of including a compound with a Henry's law constant value of less than 0.1 Y/X at 25 degrees Celsius. To adjust these data, the measured concentration of each individual chemical constituent contained in the waste is multiplied by the appropriate constituent-specific adjustment factor (f_{m25D}). If the owner or operator elects to adjust test data, the adjustment must be made to all individual chemical constituents with a Henry's law constant value greater than or equal to 0.1 Y/X at 25 degrees Celsius contained in the waste. Constituent-specific adjustment factors (f_{m25D}) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711. In addition to the requirement to reflect all organic compounds in the waste with Henry's law constant values greater than or equal to 0.1 Y/X [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3] at 25 degrees Celsius, other appropriate methods include:

(A) Any EPA standard method that has been validated in accordance with ''Alternative Validation Procedure for EPA Waste and Wastewater Methods'', 40 CFR part 63, appendix D.

(B) Any other analysis method that has been validated in accordance with the procedures specified in Section 5.1 or Section 5.3, and the corresponding calculations in Section 6.1 or Section 6.3, of Method 301 in 40 CFR part 63, appendix A. The data are acceptable if they meet the criteria specified in Section 6.1.5 or Section 6.3.3 of Method 301. If correction is required under section 6.3.3 of Method 301, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of Method 301 are not required.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(C) All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous waste stream are collected such that a minimum loss of organics occurs throughout the sample collection and handling process, and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained on-site in the facility operating records. An example of an acceptable sampling plan includes a plan incorporating sample collection and handling procedures in accordance with the guidance found in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, or in Method 25D in 40 CFR part 60, appendix A.

* * * * *

(iii) Analysis. Each collected sample shall be prepared and analyzed in accordance with Method 25D in 40 CFR part 60, appendix A, or using one or

more appropriate methods from other reliable sources. When the owner or operator is making a waste determination for a treated hazardous waste that is to be compared to an average VO concentration at the point of waste origination or the point of waste entry to the treatment system, to determine if the conditions of § 264.1082(c)(2)(i) through (c)(2)(vi) of this part, or § 265.1083(c)(2)(i) through (c)(2)(vi) of this subpart are met, then the waste samples shall be prepared and analyzed using the same method or methods as were used in making the initial waste determinations at the point of waste origination or at the point of entry to the treatment system. If Method 25D in 40 CFR part 60, appendix A is not used, then one or more methods should be chosen that are appropriate to ensure that the waste determination accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3] at 25 degrees Celsius. Examples of other methods from other reliable sources which might be appropriate include Method 8260 or 8270 in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846; or Method 624, 625, 1624, or 1625 of 40 CFR part 136, appendix A. At the owner or operator's discretion, the owner or operator may adjust test data obtained by any appropriate method to discount any contribution to the total volatile organic concentration that is a result of including a compound with a Henry's law constant value less than 0.1 Y/X at 25 degrees Celsius. To adjust these data, the measured concentration of each individual chemical constituent in the waste is multiplied by the appropriate constituent-specific adjustment factor (f_{m25D}). If the owner or operator elects to adjust test data, the adjustment must be made to all individual chemical constituents with a Henry's law constant value greater than or equal to 0.1 Y/X at 25 degrees Celsius contained in the waste. Constituent-specific adjustment factors (f_{m25D}) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711. In addition to the requirement to reflect all organic compounds in the waste with Henry's law constant values greater than or equal to 0.1 Y/X [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3] at 25 degrees Celsius, other appropriate methods include:

(A) Any EPA standard method that has been validated in accordance with ''Alternative Validation Procedure for EPA Waste and Wastewater Methods'', 40 CFR part 63, appendix D.

(B) Any other analysis method that has been validated in accordance with the procedures specified in Section 5.1 or Section 5.3, and the corresponding calculations in Section 6.1 or Section 6.3, of Method 301 in 40 CFR part 63, appendix A. The data are acceptable if they meet the criteria specified in Section 6.1.5 or Section 6.3.3 of Method 301. If correction is required under section 6.3.3 of Method 301, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of Method 301 are not required.

* * * * *

(c) * * *

(3) * * *

(i) Sampling. A sufficient number of samples shall be collected to be representative of the waste contained in the tank. All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous waste are collected such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained on-site in the facility operating records. An example of an acceptable sampling plan includes a plan incorporating sample collection and handling procedures in accordance with the guidance found in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, or in Method 25D in 40 CFR part 60, appendix A.

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

29. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 1006, 2002(a), 3001–3009, 3014, 6905, 6906, 6912, 6922, 6924–6927 and 6937.

Subpart H—Hazardous Waste Burned in Boilers and Industrial Furnaces

30. Section 266.100 is amended by revising paragraphs (d)(1)(ii) and (g)(2) to read as follows:

§ 266.100 Applicability.

* * * * *

(d) * * *

(1) * * *

(ii) Sample and analyze the hazardous waste and other feedstocks as necessary to comply with the requirements of this paragraph by using appropriate methods such as those found in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, or other reliable sources. The owner or operator shall use the best available method for the particular determination; and

* * * * *

(g) * * *

(2) Sample and analyze the hazardous waste as necessary to document that the waste is burned for recovery of economically significant amounts of precious metal, by using appropriate methods such as those found in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, or other reliable sources. The owner or operator shall use the best available method for the particular determination; and

* * * * *

31. Section 266.102 is amended by revising paragraph (b)(1) to read as follows:

§ 266.102 Permit standards for burners.

* * * * *

(b) Hazardous waste analysis. (1) The owner or operator must provide an analysis of the hazardous waste that quantifies the concentration of any constituent identified in appendix VIII of part 261 of this chapter that may reasonably be expected to be in the waste. Such constituents must be identified and quantified if present, at levels detectable by using appropriate analytical procedures such as those found in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, or other reliable sources. The owner or operator shall use the best available method for the particular determination. The appendix VIII, part 261 constituents excluded from this analysis must be identified and the basis for their exclusion explained. This analysis will be used to provide all information required by this subpart and §§ 270.22 and 270.66 of this chapter and to enable the permit writer to prescribe such permit conditions as necessary to protect human health and the environment. Such analysis must be included as a portion of the part B permit application, or, for facilities operating under the interim status standards of this subpart, as a portion of

the trial burn plan that may be submitted before the part B application under provisions of § 270.66(g) of this chapter as well as any other analysis required by the permit authority in preparing the permit. Owners and operators of boilers and industrial furnaces not operating under the interim status standards must provide the information required by §§ 270.22 or 270.66(c) of this chapter in the part B application to the greatest extent possible.

* * * * *

32. Section 266.106 is amended by revising paragraph (a) to read as follows:

§ 266.106 Standards to control metals emissions.

(a) *General.* The owner or operator must comply with the metals standards provided by paragraphs (b), (c), (d), (e), or (f) of this section for each metal listed in paragraph (b) of this section that is present in the hazardous waste at detectable levels by using appropriate analytical procedures such as those found in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'' (EPA Publication SW–846) or other reliable sources.

* * * * *

33. Section 266.112 is amended by revising paragraph (b)(1), introductory text, and paragraph (b)(2)(i) to read as follows:

§ 266.112 Regulation of residues.

* * * * *

(b) * * *

(1) *Comparison of waste-derived residue with normal residue.* The waste-derived residue must not contain appendix VIII, part 261 constituents (toxic constituents) that could reasonably be attributable to the hazardous waste at concentrations significantly higher than in residue generated without burning or processing of hazardous waste, using the following procedure. Toxic compounds that could reasonably be attributable to burning or processing the hazardous waste (constituents of concern) include toxic constituents in the hazardous waste, and the organic compounds listed in appendix VIII of this part that may be generated as products of incomplete combustion. Sampling and analyses shall be conducted by using appropriate methods such as those found in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, or other reliable sources. For polychlorinated dibenzo-p-dioxins and polychlorinated dibenzo-furans, analyses must be performed to determine specific congeners and homologues, and the results converted to 2,3,7,8–TCDD equivalent values using the procedure specified in section 4.0 of appendix IX of this part.

* * * * *

(2) *Comparison of waste-derived residue concentrations with health-based limits*—(i) *Nonmetal constituents.* The concentration of each nonmetal toxic constituent of concern (specified in paragraph (b)(1) of this section) in the waste-derived residue must not exceed the health-based level specified in appendix VII of this part, or the level of detection (which must be determined by using appropriate analytical procedures such as those contained in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, or other reliable sources), whichever is higher. If a health-based limit for a constituent of concern is not listed in appendix VII of this part, then a limit of 0.002 micrograms per kilogram or the level of detection (which must be determined by using appropriate analytical procedures such as those found in EPA Publication SW–846 or other reliable sources), whichever is higher, must be used. The levels specified in appendix VII of this part (and the default level of 0.002 micrograms per kilogram or the level of detection for constituents as identified in Note 1 of appendix VII of this chapter) are administratively stayed under the condition, for those constituents specified in paragraph (b)(1) of this section, that the owner or operator complies with alternative levels defined as the land disposal restriction limits specified in § 268.43 of this chapter for F039 nonwastewaters. In complying with those alternative levels, if an owner or operator is unable to detect a constituent despite documenting use of best good-faith efforts as defined by applicable Agency guidance or standards, the owner or operator is deemed to be in compliance for that constituent. Until new guidance or standards are developed, the owner or operator may demonstrate such good-faith efforts by achieving a detection limit for the constituent that does not exceed an order of magnitude above the level provided by § 268.43 of this chapter for F039 nonwastewaters. In complying with the § 268.43 of this chapter F039 nonwastewater levels for polychlorinated dibenzo-p-dioxins and polychlorinated dibenzo-furans, analyses must be performed for total hexachlorodibenzo-p-dioxins, total hexachlorodibenzofurans, total pentachlorodibenzo-p-dioxins, total pentachlorodibenzofurans, total tetrachlorodibenzo-p-dioxins, and total tetrachlorodibenzofurans. Note to paragraph (b)(2)(i): The administrative stay, under the condition that the owner or operator complies with alternative levels defined as the land disposal restriction limits specified in § 268.43 of this chapter for F039 nonwastewaters, remains in effect until further administrative action is taken and notice is published in the **Federal Register** and the Code of Federal Regulations.

* * * * *

34. Appendix IX of part 266 is amended to:

a. Revise sections 1.0 and section 3.0,

b. Revise the first paragraph of section 4.0,

c. Revise paragraph (2) of section 10.3,

d. Revise the fifth bullet of paragraph (1) of section 10.5,

e. Revise the third dash text under the second bullet of paragraph (2) of section 10.5,

f. Revise the third and fifth bullets of paragraph (5) of section 10.5,

g. Revise the fourth bullet of paragraph (1) of section 10.6,

h. Revise the third and fourth bullets of paragraph (5) of section 10.6.

The revisions read as follows:

Appendix IX—Methods Manual for Compliance with the BIF Regulations

* * * * *

Section 1.0 Introduction

This document presents required methods for demonstrating compliance with U.S. Environmental Protection Agency regulations for boilers and industrial furnaces (BIFs) burning hazardous waste (see 40 CFR part 266, subpart H). The methods included in this document are:

1. Performance Specifications for Continuous Emission Monitoring (CEM) of Carbon Monoxide, Oxygen, and Hydrocarbons in Stack Gases.

2. Procedures for Estimating the Toxicity Equivalency of Chlorinated Dibenzo-p-dioxin and Dibenzofuran Congeners.

3. Hazardous Waste Combustion Air Quality Screening Procedures (HWCAQSP).

4. Simplified Land Use Classification Procedure for Compliance with Tier I and Tier II Limits.

5. Statistical Methodology for Bevill Residue Determinations.

6. Procedures for Determining Default Values for Air Pollution Control System Removal Efficiencies.

7. Procedures for Determining Default Values for Partitioning of Metals, Ash, and Total Chloride/Chlorine.

8. Alternate Methodology for Implementing Metals Controls.

a. Sampling and analytical methods for multiple metals, hexavalent chromium, HCl and chlorine, polychlorinated dibenzo-p-dioxins and dibenzofurans, and aldehydes and ketones can be found in ''Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods'' (EPA Publication SW–846). Additional methods referenced in

subpart H of part 266 but not included in this document can be found in 40 CFR parts 60 and 61, and SW–846.

b. The CEM performance specifications of section 2.0, the relevant sampling Methods 0011, 0023A, 0050, 0051, 0060, and 0061 of SW–846, incorporated by reference in § 260.11, and the toxicity equivalency procedure for dioxins and furans of section 4.0 are required procedures for determining compliance with BIF regulations. For the determination of chloride from HCl/Cl_2 emission sampling train, you must use appropriate methods such as Method 9057 of SW–846 or other appropriate methods from other reliable sources. For the determination of carbonyl compounds by high-performance liquid chromatography, you must use appropriate methods such as Method 8315 of SW–846 or other appropriate methods from other reliable sources. The CEM performance specifications are interim. The finalized CEM performance specifications will be published in 40 CFR parts 60 and 61.

* * * * *

Section 3.0 Sampling and Analytical Methods

Note: The sampling and analytical methods to the BIF manual are published in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846.

Section 4.0 Procedure for Estimating the Toxicity Equivalency of Chlorinated Dibenzo-p-Dioxin and Dibenzofuran Congeners

PCDDs and PCDFs must be determined using the most recent version of SW–846 Method 0023A, as identified and incorporated by reference in § 260.11. In this method, individual congeners or homologues[1] are measured and then summed to yield a total PCDD/PCDF value. No toxicity factors are specified in the method to compute risks from such emissions.

* * * * *

Section 10.0—Alternative Methodology for Implementing Metals Controls

* * * * *

10.3 *Basis*

* * * * *

(2) The metal concentrations in the collected kiln dust can be accurately and representatively measured (by using appropriate procedures such as those found in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'' (EPA Publication SW–846) or other reliable sources).

* * * * *

10.5 *Implementation Procedures*

* * * * *

(1) * * *

• Follow appropriate guidelines such as those described in SW–846 or other reliable sources for preparing test plans and waste analysis plans for the following tests:

* * * * *

(2) * * *

—Follow appropriate sampling and analytical procedures such as those described in SW–846 or other reliable sources and the waste analysis plan as they pertain to the condition and accessibility of the dust.

* * * * *

(5) * * *

• Follow the sampling, compositing, and analytical procedures described in this method and in other appropriate methods such as those found in SW–846 or other reliable sources, as they pertain to the condition and accessibility of the kiln dust.

* * *

• Samples must be collected at least once every 8 hours, and a daily composite must be prepared according to appropriate procedures such as those found in SW–846 or other reliable sources.

* * * * *

10.6 *Precompliance Procedures*

* * * * *

(1) * * *

• Follow appropriate procedures such as those described in SW–846 or other reliable sources for preparing waste analysis plans for the following tasks:

* * * * *

(5) * * *

• Follow the sampling, compositing, and analytical procedures described in this method and in other appropriate methods such as those found in SW–846 or other reliable sources as they pertain to the condition and accessibility of the kiln dust.

• Samples must be collected at least once every 8 hours, and a daily composite must be prepared according to appropriate procedures such as those found in SW–846 or other reliable sources.

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT

35. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

Subpart B—Permit Application

36. Section 270.19 is amended by revising paragraphs (c)(1)(iii) and (iv) to read as follows:

§ 270.19 Specific part B information requirements for incinerators.

* * * * *

(c) * * *

(1) * * *

(iii) An identification of any hazardous organic constituents listed in part 261, appendix VIII, of this chapter, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in part 261, appendix VIII, of this chapter which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion stated. The waste analysis must rely on appropriate analytical techniques such as those found in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, or other reliable sources.

(iv) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by appropriate analytical methods such as those found in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, or other reliable sources.

* * * * *

37. Section 270.22 is amended by revising paragraph (a)(2)(ii)(B) to read as follows:

§ 270.22 Specific part B information requirements for boilers and industrial furnaces burning hazardous wastes.

* * * * *

(a) * * *

(2) * * *

(ii) * * *

(B) Results of analyses of each waste to be burned, documenting the concentrations of nonmetal compounds listed in appendix VIII of part 261 of this chapter, except for those constituents that would reasonably not be expected to be in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion explained. The analysis must rely on appropriate analytical techniques such as those found in Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA Publication SW–846, or other reliable sources.

* * * * *

Subpart F—Special Forms of Permits

38. Section 270.62 is amended by revising paragraphs (b)(2)(i)(C) and (D) to read as follows:

§ 270.62 Hazardous waste incinerator permits.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(C) An identification of any hazardous organic constituents listed in part 261, appendix VIII of this chapter, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in part 261, appendix VIII, of this chapter which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified, and the basis for the exclusion stated. The waste analysis must rely on appropriate analytical techniques such as those found in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, or other reliable sources.

(D) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by appropriate analytical methods such as those found in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, or other reliable sources.

* * * * *

39. Section 270.66 is amended by revising paragraphs (c)(2)(i) and (ii) to read as follows:

§ 270.66 Permits for boilers and industrial furnaces burning hazardous waste.

* * * * *

(c) * * *

(2) * * *

(i) An identification of any hazardous organic constituents listed in appendix VIII, part 261, of this chapter that are present in the feed stream, except that the applicant need not analyze for constituents listed in appendix VIII that would reasonably not be expected to be found in the hazardous waste. The constituents excluded from analysis must be identified and the basis for this exclusion explained. The waste analysis must be conducted in accordance with appropriate analytical techniques such as those found in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, or other reliable sources.

(ii) An approximate quantification of the hazardous constituents identified in the hazardous waste, within the precision produced by appropriate analytical methods such as those found in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, or other source.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

40. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a) and 6926.

41. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication in the **Federal Register**, to read as follows:

§ 271.1 Purpose and scope.

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
[Date of publication of final rule in the Federal Register (FR)].	Process Vent and Equipment Leak Organic Air Emission Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.	[FR page numbers]	[Date of publication of final rule].
[Date of publication of final rule in the Federal Register (FR)].	Burning of Hazardous Waste in Boilers and Industrial Furnaces.	[FR page numbers]	[Date of publication of final rule].
[Date of publication of final rule in the Federal Register (FR)].	Air Emission Standards Tanks, Surface Impoundments, and Containers.	[FR page numbers]	[Date of publication of final rule].

42. Section 271.21 is amended by adding the following entry to Table 1 in chronological order by date of publication in the **Federal Register**, to read as follows:

§ 271.21 Procedures for revision of State programs.

* * * * *

TABLE 1 TO SEC. 271.21

Title of regulation	Promulgation date	Federal Register reference
Office of Solid Waste Testing and Monitoring Activities, Methods Innovation Rule.	[Date of publication of final rule in the Federal Register (FR)].	[FR page numbers].
Process Vent and Equipment Leak Organic Air Emission Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.	[Date of publication of final rule in the Federal Register (FR)].	[FR page numbers].
Burning of hazardous waste in boilers and industrial furnaces.	[Date of publication of final rule in the Federal Register (FR)].	[FR page numbers].
Air Emissions Standards for Tanks, Surface Impoundments, and Containers.	[Date of publication of final rule in the Federal Register (FR)].	[FR page numbers].

PART 279—STANDARDS FOR THE MANAGEMENT OF USED OIL

43. The authority citation for part 279 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001 through 3007, 3010, 3014, and 7004 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, and 6974); and sections 101(37) and 114(c) of CERCLA (42 U.S.C. 9601(37) and 9614(c)).

Subpart B—Applicability

44. Section 279.10 is amended by revising paragraph (b)(1)(ii) introductory text to read as follows:

§ 279.10 Applicability.

* * * * *

(b) * * *

(1) * * *

(ii) Rebuttable presumption for used oil. Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an appropriate analytical method such as those found in ''Test Methods for Evaluating Solid Waste, Chemical/Physical Methods,'' EPA Publication SW–846, or other reliable sources to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of part 261 of this chapter).

* * * * *

Subpart E—Standards for Used Oil Transporter and Transfer Facilities

45. Section 279.44 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 279.44 Rebuttable presumption for used oil.

* * * * *

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an appropriate analytical method such as those found in ''Test Methods for Evaluating Solid Waste, Chemical/Physical Methods,'' EPA Publication SW–846, or other reliable sources to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Appendix VIII of part 261 of this chapter).

* * * * *

Subpart F—Standards for Used Oil Processors and Re-Refiners

46. Section 279.53 is amended by revising paragraph (c) introductory text to read as follows:

§ 279.53 Rebuttable presumption for used oil.

* * * * *

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an appropriate analytical method such as those found in ''Test Methods for Evaluating Solid Waste, Chemical/Physical Methods,'' EPA Publication SW–846, or other reliable sources to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Appendix VIII of part 261 of this chapter).

* * * * *

Subpart G—Standards for Used Oil Burners Who Burn Off-Specification Used Oil for Energy Recovery

47. Section 279.63 is amended by revising paragraph (c) introductory text to read as follows:

§ 279.63 Rebuttable presumption for used oil.

* * * * *

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an appropriate analytical method such as those found in ''Test Methods for Evaluating Solid Waste, Chemical/Physical Methods,'' EPA Publication SW–846, or other reliable sources to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Appendix VIII of part 261 of this chapter).

* * * * *

[FR Doc. 02–26441 Filed 10–29–02; 8:45 am]

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

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Medical Device User Fee and Modernization Act of 2002 (Oct. 26, 2002; 116 Stat. 1588)

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Health Care Safety Net Amendments of 2002 (Oct. 26, 2002; 116 Stat. 1621)

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